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No. 02-

IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR A WRIT OF CERTIORARI

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November 21, 2002

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97 pp

QUESTION PRESENTED FOR REVIEW

Whether, consistent with the First Amendment, a court adjudicating a property dispute between a religious denomination and a local congregation may disregard the denomination's constitution and instead conduct a freewheeling "totality of the circumstances" analysis of the ecclesiastical relationship between presiding church officials and a subordinate pastor, and between the denomination and the departing members.

PARTIES TO THE PROCEEDINGS

In addition to the parties listed in the caption, the following were defendants below and are petitioners in this case:

Philadelphia-Baltimore Annual Conference of the A.M.E. Zion Church

Full Gospel A.M.E. Zion Church;

and the following was plaintiff below and is respondent in this case:

Pastor John A. Cherry

RULE 29.6 STATEMENT

Petitioner African Methodist Episcopal Zion Church is a non-governmental corporation with no parent company. No publicly traded corporation owns 10% or more of this petitioner.

Petitioner Philadelphia-Baltimore Annual Conference of the A.M.E. Zion Church is not a non-governmental corporation.

Petitioner Full Gospel A.M.E. Zion Church is a non-governmental corporation with no parent company. No publicly traded corporation owns 10% or more of this petitioner.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners African Methodist Episcopal Zion Church, Philadelphia-Baltimore Annual Conference of the A.M.E. Zion Church and Full Gospel A.M.E. Zion Church (collectively, "AME Zion" or "the Church") respectfully petition for a writ of certiorari to review the judgment of the Maryland Court of Appeals in this case.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is reported at 803 A.2d 548 (Md. 2002), and is reproduced in the Petition Appendix ("Pet. App.") at 1a-39a. The judgment of the Circuit Court for Prince George's County, Maryland is not reported, and is reproduced at Pet. App. 41a-43a.

JURISDICTION

The judgment of the Maryland Court of Appeals was entered on July 24, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257. Although the decision below contemplates further proceedings in the trial court, the Maryland Court of Appeals has "finally determined" the federal issue presented here—namely, whether those very proceedings would violate petitioners' rights under the First Amendment. *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 477 (1975). Moreover, once those proceedings have occurred, the issue of whether the proceedings themselves are constitutional (as opposed to the results thereof) will no longer be subject to review by the Court of Appeals or, indeed, by this Court. Accordingly, this case falls within the third category of reviewable decisions identified in *Cox Broadcasting*. See *id.* at 481-82; *id.* at 506 (Rehnquist, J., dissenting). In addition, because "a refusal immediately to review the state court decision might seriously erode federal policy," this case also falls within the fourth category identified in *Cox Broadcasting*. *Id.* at 482-85. See *infra* at 21-22.

CONSTITUTIONAL, STATUTORY, OR OTHER LEGAL PROVISIONS

The First Amendment to the United States Constitution is reproduced at Pet. App. 44a.

STATEMENT OF THE CASE

This Court last addressed the constitutional limitations on civil adjudication of church property disputes more than 20 years ago. In so doing, it allowed States to apply "neutral principles" in resolving such disputes, concluding that this method would avoid the need for judicial review of religious doctrines and practices while imposing little burden on a denomination's ability to maintain its interest in local church property if a congregation withdrew from the denomination. The Court assumed that denominational interests would be protected if, "[a]t any time before the dispute erupts, ... the constitution of the general church [is] made to recite an express trust in favor of the denominational church." *Jones* v. *Wolf*, 443 U.S. 595, 606 (1979). The Court stressed that "[t]he burden involved in taking such steps will be minimal," and that "the civil courts will be bound to give effect to the result indicated by the parties"—thus avoiding the need for litigation over religious "doctrine or practice." *Id.* at 602, 606.

Contrary to the result this Court contemplated in *Jones*, the Maryland Court of Appeals has now ruled that, under the First Amendment, a religious denomination *cannot* avoid such intrusive judicial inquiries, and protect its interest in local church property, simply by declaring in the church constitution that property acquired and used by the congregation is held in trust for the denomination. It is not enough, according to that court, that a congregation voluntarily affiliates with a denomination whose rules clearly impose such a trust. Rather, the denomination can establish ownership of the property only if it can prove, based on "*all* relevant documents and circumstances"—including the course of dealing

between a presiding bishop and a subordinate pastor—that the local congregation consented to the trust arrangement (by some act beyond freely affiliating with the denomination), and that the denomination did not thereafter waive its rights under the trust provision. Pet. App. 34a-35a.

That ruling implicates important, recurring issues regarding the proper role of civil courts in adjudicating disputes involving religious institutions, issues on which the lower courts are deeply divided. It conflicts in principle with the First Amendment analysis in *Jones*. And it conflicts squarely with a decision of the Georgia Supreme Court that this Court endorsed in *Jones*, as well as other subsequent decisions of the highest State courts. Moreover, by directing the trial court to examine the religiously sensitive relationship between a bishop and a pastor to determine whether there was "consent" or "waiver," the Maryland court not only has violated the principle of neutrality that it purported to apply, but also has violated this Court's consistent teaching that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602. In so doing, the holding below has also widened a conflict among State supreme courts over the extent to which the First Amendment constrains the judicial examination of intra-church disciplinary matters and relationships.

For these reasons, and because of the enormous practical implications of the decision below—both for the Church and for other religious denominations nationwide—that decision merits this Court's review.

1. AME Zion is an hierarchical church composed of more than 3000 congregations and 1,000,000 adherents in the United States, as well as hundreds of thousands of members elsewhere around the world. It is administered by twelve bishops, who oversee regional Annual Conferences. Every four years, delegates from the Annual Conferences attend the General Conference, the "supreme body" of the Church.

Among other duties, the General Conference revises the *Book of Discipline*, which is the Church's constitution. The *Book of Discipline* governs nearly every aspect of the Church, setting forth rules and precepts of the Church's faith and practice. It requires preachers, probationary members, and congregations that wish to join the Church to be instructed in the Church's rules and doctrines. Pet. App. 46a-48a (¶¶ 90.1, 91.1, 99.1). Accordingly, both admission as a member and elevation to the pastorate require formal acceptance of the *Book of Discipline*. *Id.* at 50a-51a, 60a (¶¶ 213.6-.12, 656).

The *Book of Discipline* expressly requires all local congregations to hold church property in trust for AME Zion. Pet. App. 54a (¶ 494). It also makes clear that a congregation cannot evade this obligation simply by omitting the requisite trust clause from a property deed. *Id.* at 55a (¶ 495.2). These provisions are rooted in the polity, administration and structure of the church originally developed by Methodism's founder, John Wesley. He required local congregations to hold property in trust for the denomination so as to ensure the appointment of preachers who would espouse the doctrine Wesley taught; to give local preachers independence from local trustees so that they could "'speak the full and the whole truth'"; and to guarantee that "'chapels remain unalienated from their original purpose.'" John Leo Topolewski, *Mr. Wesley's Trust Clause: Methodism in the Vernacular*, 37 Meth. Hist. 143, 144-46 (1999).

2. These rules play a critical role in the dispute here, which began as a religious schism and evolved into a dispute over the ownership of church property. In July 1999, the pastor and most of the members of the Full Gospel AME Zion Church ("Full Gospel"), a congregation located in Prince George's County, Maryland, decided to disassociate from AME Zion, with which Full Gospel had been affiliated since its founding in 1981. In separating from AME Zion, the local pastor, John Cherry, and other departing members declared Full Gospel to be the sole owner of real and personal property

that the congregation's leaders had previously held in trust for AME Zion. At Pastor Cherry's urging, Full Gospel's trustees transferred the congregational property to From the Heart Church Ministries, Inc. ("From the Heart").

Shortly thereafter, From the Heart filed suit in Maryland State court, seeking, among other relief, a declaration that it owns all of Full Gospel's assets. Pet. App. 13a. AME Zion asserted counterclaims against From the Heart and Pastor Cherry. *Id.* at 14a. AME Zion argued that Full Gospel's property had always been held in trust for AME Zion, and that Full Gospel's local trustees were not authorized to divert AME Zion's property from that trust simply by withdrawing from the denomination.

Following cross-motions to dismiss, the trial court ruled as a matter of law that the property was subject to a trust in AME Zion's favor. Pet. App. 14a-16a. The court reasoned that, by affiliating with AME Zion, Full Gospel had implicitly agreed to abide by the *Book of Discipline*. As noted above, that document requires all local congregations to hold church property in trust for AME Zion, and makes clear that the existence of the trust is not contingent upon express language in the property deed. Thus, the court concluded, the contested property must remain within AME Zion upon the withdrawal of Pastor Cherry and his followers. *Id.* at 15a-16a.

3. Respondents From the Heart and Pastor Cherry appealed that decision, and the Maryland Court of Appeals granted *certiorari sua sponte*. Pet. App. 16a. In the proceedings that followed, respondents urged that court to order additional discovery and a trial to determine whether Pastor Cherry and Full Gospel had in fact consented to the *Book of Discipline*'s property provisions and, if they had, whether AME Zion had "waived" its right to control the property. Br. of From the Heart to the Md. Ct. App. ("FTH Br.") 13-16. Respondents argued that a wide-ranging inquiry was necessary because Full Gospel "was not a typical church within AME Zion" inasmuch as it took in members of other AME Zion

congregations, "used the untraditional name 'Full Gospel,' adopted worship practices that AME Zion considered unconventional," and "departed from AME Zion's traditional modes of behavior." *Id.* at 9-10, 39. They further argued that AME Zion and its presiding bishops had not adequately responded to those and other supposed irregularities. Accordingly, respondents argued, the denomination and its bishops had "waived" the right to enforce the denomination's own governing document. *Id.* at 9-11, 14-15, 27, 35-37, 39.

AME Zion responded that, under "neutral principles" of Maryland law—principles that would govern a dispute between similarly situated secular entities—the denomination must prevail. First, it argued, the *Book of Discipline* impressed all local church property with a trust in the denomination's favor. Moreover, Full Gospel's decision to affiliate with the denomination constituted an agreement to abide by the *Book of Discipline*, which requires congregations to hold church property in trust for the denomination.

In addition, AME Zion contended that the discovery sought by respondents, and the subsequent trial on these issues, would necessitate an unconstitutional intrusion into the denomination's self-governance, mode of discipline, and religious practices. It explained that its bishops' response to Full Gospel's "unconventional" practices was informed by the bishops' views on religious doctrine and polity, as well as each bishop's understanding of how best to nurture and reinforce the ecclesiastical relationship between the denomination and its clergy and laity. Accordingly, any judicial inquiry into whether the response by AME Zion and its presiding bishops amounted to a "waiver" of property rights would necessarily constitute an improper examination of church doctrine, governance and practice.

4. The Maryland Court of Appeals reversed. The court reasoned that, despite the unambiguous trust provision in the *Book of Discipline*, it could not conclude that AME Zion had the right to control the property. It acknowledged that, by its

terms, the *Book of Discipline* imposed a trust in the denomination's favor and that all of the criteria giving rise to such a trust under the *Discipline* had been satisfied. Pet. App. 33a. And it did not dispute (or even address) AME Zion's showing that it would be entitled to prevail under the "consent-by-affiliation" doctrine that governs analogous disputes between other voluntary associations and their members. Instead, the court simply concluded that, in the absence of an express trust or reverter clause contained in the property deeds, or in a denomination-specific state statute, it would not regard as conclusive the trust language in AME Zion's *Book of Discipline*. Indeed, the court suggested that it *could not* do so without running afoul of the Establishment Clause of the First Amendment. *Id.* at 35a-37a. Thus, according to the court, AME Zion could establish its interest in the property only by proving that the congregation had "consented" to the trust provisions in the *Book of Discipline* by some act over and above joining the denomination, and that the denomination had not waived its rights. *Id.* at 33a-38a.

The court also rejected (if only implicitly) AME Zion's argument that such an inquiry would be unconstitutional because it would necessitate an intrusive examination of religious doctrine, practice and polity. Instead, the Court of Appeals ordered precisely the invasive inquiry requested by respondents. Pet. App. 38a. Specifically, that court held that the trial court must conduct a "more expanded review of documents and circumstances," *id.*, including "*all* relevant documents and circumstances," *id.* at 35a. This review, moreover, will include scrutiny of "the relations between the parties," *id.* at 34a, including the relationship between Pastor Cherry and his presiding bishops as well as between the denomination and the congregation. And, in investigating these relationships, the trial court presumably is to consider the decision by AME Zion and its presiding bishops not to discipline Pastor Cherry or Full Gospel formally, as well as

the extent and significance of Full Gospel's "unconventional" worship practices.

Accordingly, absent review by this Court, this case will now be resolved by the invasive and unconstitutional judicial inquiry mandated by the Maryland Court of Appeals.

REASONS FOR GRANTING THE PETITION

This case warrants the Court's review for two distinct reasons. First, it presents an important and recurring issue regarding the proper application of *Jones* v. *Wolf*—one on which the highest courts of several States (including, now, Maryland) are in conflict. In *Jones*, the Court established ground rules for judicial resolution of church property disputes, with the twin goals of avoiding judicial inquiry into matters of "doctrine or practice" while allowing churches to order their affairs in a predictable fashion. 443 U.S. at 603.

Yet the promise of *Jones* has not been realized. In the context presented here—*i.e.*, the propriety of reliance on a trust clause in a church constitution—State supreme courts have adopted widely divergent views of the constitutional limitations embraced by the Court in *Jones*. Like a few other State supreme courts, the court below thought that deferential reliance on provisions in church constitutions is forbidden by the Establishment Clause, and that a more detailed review of ecclesiastical issues was therefore required to resolve this dispute. Pet. App. 35a-37a. It reached that conclusion even though this Court approved reliance on such provisions, see *Jones*, 443 U.S. at 606, and even though other State supreme courts have relied upon them to resolve church property disputes, and thereby avoid the need for intrusive inquiries into matters of religious doctrine and practice. See *Carnes* v. *Smith*, 222 S.E.2d 322 (Ga. 1976); *Cumberland Presb.* v. *Branstetter*, 824 S.W.2d 417 (Ky. 1992); *Fluker Cmty. Church* v. *Hitchens*, 419 So. 2d 445 (La. 1982); *African Meth. Episc. Zion Church in Am., Inc.* v. *Zion Hill Meth. Church, Inc.*, 534 So. 2d 224 (Ala. 1988). Immediate review is needed

to resolve this conflict on an important First Amendment issue.

Second, this Court's review is needed to resolve a conflict among the State supreme courts over the extent to which the First Amendment constrains the ability of civil courts to scrutinize sensitive ecclesiastical relationships and disciplinary matters in religious institutions. Numerous State courts have properly interpreted *Jones* and its predecessors to place church government, discipline and ecclesiastical relationships beyond judicial scrutiny. In contrast, the Maryland Court of Appeals, along with the Supreme Court of Connecticut and an intermediate appellate court in North Carolina, have dispensed with such limits by inviting a wide-ranging inquiry into such matters in the context of disputes over church property. This Court should grant review to resolve this conflict and to make clear that the First Amendment does not allow courts to intrude into matters of church polity and practice.

I. THIS COURT'S REVIEW IS NEEDED TO RESOLVE A CONFLICT OVER THE CONSTITUTIONAL PROPRIETY OF RELYING UPON TRUST CLAUSES LIKE THOSE ENDORSED IN *JONES* v. *WOLF*.

In a series of cases stretching back to 1871, this Court has recognized clear constraints on the authority of civil courts to resolve intra-denominational religious disputes. This is because, as a constitutional matter, judicial examination of church doctrine, practice, or governance impinges upon the free exercise of religion. *Presb. Church* v. *Mary Elizabeth Blue Hull Mem'l Presb. Church*, 393 U.S. 440, 449 (1969) ("*Blue Hull*"). And such inquiries are well outside the ken of civil courts. *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 714 & n.8 (1976); *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 729 (1871); James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶ 5 (1785), *reproduced in Everson* v. *Board of Educ.*, 330 U.S. 1, app. at 63-72 (1947).

These general principles governing intra-denominational disputes have often been applied to disputes over church property, most recently in *Jones* v. *Wolf*. There, the Court outlined a framework that gives States the flexibility to effectuate their property laws while simultaneously protecting the free exercise of religious denominations and avoiding the need for intrusive inquiries into religious matters: "[A] State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters," *Maryland & Virginia Eldership of the Churches of God* v. *Church of God*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring), or matters of religious "practice," *Jones*, 443 U.S. at 602. Within these broad parameters, the Court sanctioned two methods of resolving such disputes—the "neutral principles" approach, *id.* at 604, and the "polity" or "deference" approach, *Maryland & Virginia Eldership*, 396 U.S. at 368-69 (Brennan, J., concurring); *Watson*, 80 U.S. (13 Wall.) at 727.

Under the neutral principles approach—which the Maryland court purported to apply here—the court "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Jones*, 443 U.S. at 603. At the same time, the court must ensure that its inquiry does not delve into religious doctrine, practice or polity: "[G]eneral principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." *Md. & Va. Eldership*, 396 U.S. at 370 (Brennan, J., concurring); *Jones*, 443 U.S. at 611 (Powell, J., dissenting) (referring to neutral principles as a "restrictive rule of evidence"); see also *Jones*, 443 U.S. at 603 (neutral principles "promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice"). Under this approach, a court may rely upon,

among other things, the provisions in a denominational constitution. *Id.* at 603; *Md. & Va. Eldership*, 396 U.S. at 367.[1]

Here, the court below held that the trust provisions in the *Discipline* could not, consistent with the First Amendment, be given dispositive effect. This holding disregards this Court's decision in *Jones* and squarely conflicts with the decisions of several State supreme courts, including those that apply the "neutral principles" approach, as well as those that apply the "polity" approach.

A. The Decision Below Disregards *Jones* v. *Wolf*, Which Expressly Endorsed Reliance Upon Trust Provisions In Denominational Constitutions.

Jones, like this case, arose out of a denominational schism. A majority of the Vineville Presbyterian Church of Macon, Georgia voted to discontinue an affiliation with the Presbyterian Church in the United States ("PCUS"). As in this case, both the departing members and those who remained loyal to the denomination asserted rights to the local church property. Unlike AME Zion, however, PCUS had not incorporated language into its governing documents requiring that all local church property be held in trust for the denomination.

In upholding a lower court's decision to apply the neutral principles test, *Jones* specifically approved the use of trust clauses in church constitutions as sufficient to protect a denomination's interest in local church property while avoiding the need for intrusive inquiry into religious matters:

> [T]he parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property.... [T]he constitution of the general

[1] However, even the interpretation of these documents requires special solicitude: "[A] civil court must take special care to scrutinize the document in purely secular terms," and where the interpretation of the document requires the resolution of a religious controversy, "the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Jones*, 443 U.S. at 604.

> church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. *And the civil courts will be bound to give effect to the result indicated by the parties* ....

443 U.S. at 606 (emphasis added); see also *id.* at 607-08 (denomination can ensure control of church property "by providing, in the corporate charter or the constitution of the general church ... that the church property is held in trust for the general church and those who remain loyal to it"). Furthermore, *Jones* specifically approved a State court decision that relied on a trust clause nearly identical to AME Zion's. *Id.* at 600 n.2 (citing *Carnes*; quoting *Book of Discipline of the United Methodist Church* ¶¶ 1537, 1503.5 (1968)).

Accordingly, under *Jones*, civil courts are obviously *allowed* to rely upon trust clauses in church constitutions. Indeed, the decision made clear that those purporting to apply the neutral principles approach *must* enforce the terms of such trusts if they would do so to resolve a secular dispute. *Id.* at 606. The Maryland Court of Appeals' conclusion that such reliance is unconstitutional therefore conflicts with *Jones*.

B. The Decision Below Conflicts With Numerous State Supreme Courts That Have Found No Constitutional Barrier To Relying Upon Provisions In Denominational Constitutions.

The decision below squarely conflicts with decisions of many State supreme courts that have given dispositive effect to provisions in denominational constitutions, and thereby avoided the need for the kind of intrusive inquiry into religious matters mandated by the Court of Appeals here.

1. At least four such courts applying the "neutral principles" approach have relied heavily upon provisions of denominational constitutions to avoid the need for a more intrusive examination of religious matters. In *Carnes*, the Georgia Supreme Court used that approach to resolve a dis-

pute that arose when a local congregation withdrew from the United Methodist Church. Although, as here, the deed itself contained no trust clause, the court found that trust language in the denomination's *Book of Discipline*—which was nearly identical to the trust provisions in AME Zion's *Book of Discipline*—established that the departing congregation was not entitled to keep the property. 222 S.E.2d at 328. The approach followed by the Georgia Supreme Court was expressly rooted in the First Amendment's mandate that courts avoid "an inquiry into church doctrine and practice." *Id.* at 326; *accord Crumbley* v. *Solomon*, 254 S.E.2d 330, 333 (Ga. 1979) (also relying on trust provision in church constitution).

Likewise, in *Cumberland Presbytery* v. *Branstetter*—a case involving facts nearly identical to those presented here—the Kentucky Supreme Court followed the same approach as *Carnes*. Like the AME Zion *Book of Discipline*, the denominational constitution of the Cumberland Presbyterian Church provided that congregational property is held in trust for the denomination, "whether or not the deed to the property so states." 824 S.W.2d at 421. Applying *Jones*, the court found that provision to be "decisive." *Id.* In stark contrast to the Maryland Court of Appeals, the Kentucky court recognized that *Jones* mandated just this approach, inasmuch as the "denomination [had] followed to a T the suggestion of the U.S. Supreme Court in [*Jones* v.] *Wolf* as to a method of ensuring 'that the faction loyal to the hierarchical church will retain the church property.'" *Id.* at 422. Like *Carnes*, *Cumberland Presbytery* recognized that the First Amendment poses no bar to relying on trust clauses in a denomination's governing rules, particularly when such reliance avoids any need for an intrusive inquiry into religious matters.

The Louisiana Supreme Court reached a similar result in *Fluker Community Church* v. *Hitchens*. There, the court awarded control of disputed property to a denomination. It relied on provisions in the church constitution, 419 So. 2d at 448, and the fact that, as in this case, the congregation's name

on the deed also contained the name of the denomination, compare *id.* ("Fluker Chapel A.M.E. Church") with Pet. App. 5a ("Full Gospel A.M.E. Zion Church, Inc."). As in *Carnes* and *Cumberland Presbytery*, the court was thereby able to avoid entangling inquiries into matters of religious doctrine and practice.

Finally, *African Methodist Episcopal Zion Church* v. *Zion Hill Methodist Church, Inc.* presents the starkest conflict with the Maryland Court of Appeals' decision, for it involved the same denomination and the same church constitution at issue in this case. There, the Alabama Supreme Court relied upon AME Zion's *Book of Discipline* in concluding that a local congregation held church property in trust for AME Zion. 534 So. 2d at 226-27. And, unlike the Maryland Court of Appeals, the Alabama court was not deterred by the departing congregation's suggestion that AME Zion had tacitly waived its rights by its failure to add a reverter clause to the property deed. *Id.* at 227. The trust clause in the *Book of Discipline* was deemed conclusive and, once again, the court found no constitutional barrier to enforcing its unambiguous terms. By relying upon the church constitution, moreover, the court was able to avoid the kind of entangling, intrusive inquiry mandated by the Maryland court in this case.

Because these courts found no constitutional barrier to placing principal reliance upon a denominational constitution, their decisions squarely conflict with the decision of the Maryland Court of Appeals.

2. The conclusion of the court below also conflicts in principle with numerous decisions applying the "polity" or "deference" approach, which remains an option under *Jones*, see *supra* at 10. That approach—in which a court simply defers to the highest decisionmaking body in a hierarchical denomination, see *Watson*, 80 U.S. (13 Wall.) at 724-27—has been applied by the highest courts of (at a minimum) West Virginia, Iowa, Massachusetts, Nevada, and New Jersey. See *Original Glorious Church of God in Christ, Inc. of the Apos-*

tolic Faith v. *Myers*, 367 S.E.2d 30, 33-34 (W. Va. 1988); *Fonken* v. *Cmty. Church*, 339 N.W.2d 810, 816-17 (Iowa 1983); *Antioch Temple, Inc.* v. *Parekh*, 422 N.E.2d 1337, 1341 (Mass. 1981); *Tea* v. *Protestant Episc. Church*, 610 P.2d 182, 184 (Nev. 1980); *Protestant Episc. Church* v. *Graves*, 417 A.2d 19, 22-23 (N.J. 1980).

The starkness of this conflict is illustrated by the West Virginia Supreme Court's decision in *Original Glorious Church of God*. In that case, the court applied the polity approach (which it termed "the 'judicial deference' test") to a church property dispute arising out of a denominational schism. 367 S.E.2d at 33. The court looked to only one source of evidence: the denomination's constitution, which it treated as the final and definitive statement of the church's ruling body, and which it deemed dispositive of the ownership question. *Id.* This conclusion conflicts with the Maryland Court of Appeals' view that such reliance is constitutionally improper.

3. Finally, more than just widening this conflict, the ruling below threatens to disrupt the certainty that *Jones* promised by throwing into disarray every denomination that—as *Jones* suggested—protects its property interests with a trust provision in its constitution. Numerous denominations have relied upon this Court's guidance in *Jones* in using trust provisions similar to those at issue here. These include the Episcopal Church of the United States of America, the United Presbyterian Church (U.S.A.), the African Methodist Episcopal Church, and the United Methodist Church.[2] Indeed, the United Presbyterian Church added a trust provision to its church constitution *because of Jones*. See *Presb. of Elijah Parish Lovejoy* v. *Jaeggi*, 682 S.W.2d 465, 470 (Mo. 1984).

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[2] Episc. Church of the United States of Am. et al., *Canons of the General Convention*, Canon 7.4, at 38 (2000); Presb. Church (U.S.A.), *Book of Order* § G-8.0201 (2002); African Meth. Episc. Church, *Doctrine and Discipline of the African Methodist Episcopal Church* 57 (2001); United Meth. Church, *Book of Discipline of the United Methodist Church* ¶¶ 2501, 2503, at 649-51 (2000).

Each of these denominations now faces the prospect that its carefully-arranged system of property ownership will be for naught, and that it will thereby be subjected to the kind of intrusive judicial inquiry that the Maryland Court of Appeals has now mandated in this case. This Court should grant *certiorari* to make clear that the First Amendment does not bar a court faced with a dispute over church property from considering, or even from giving dispositive effect to, a denominational constitution.

II. THIS COURT'S REVIEW IS NEEDED TO RESOLVE A CONFLICT OVER THE EXTENT TO WHICH THE FIRST AMENDMENT ALLOWS COURTS TO EXAMINE ECCLESIASTICAL RELATIONSHIPS IN RESOLVING CHURCH PROPERTY DISPUTES.

This Court's review is also needed to resolve an important conflict regarding the extent to which the First Amendment *permits* courts to investigate the relationship between presiding ecclesiastical officials and a priest or pastor, and the dealings between a denomination and a member congregation. Here, the Maryland court has mandated a wide-ranging inquiry into those relationships, one that runs afoul of this Court's longstanding First Amendment teachings and that conflicts with decisions of numerous State supreme courts.

As noted above, this Court has set outer limits on the manner in which courts may resolve intra-denominational disputes. Whether a court elects to operate within the framework of neutral principles, the polity approach, or some other method of its own devising, its inquiry is curtailed by the constitutional prohibitions against "determining ecclesiastical questions," *Blue Hull*, 393 U.S. at 447, and resolving issues of "religious doctrine and practice." *id.* at 449. In particular, courts may not delve into relationships between a hierarchical church's superior and subordinate officials, for "questions of church discipline and the composition of the church hierarchy are at the core of

ecclesiastical concern." *Serbian*, 426 U.S. at 717; *Watson*, 80 U.S. (13 Wall.) at 726; *Bouldin* v. *Alexander*, 82 U.S. (15 Wall.) 131, 139 (1872) ("we have no power to revise or question ordinary acts of church discipline"). These limitations implement the broader principle that "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'" *Corp. of the Presiding Bishop* v. *Amos*, 483 U.S. 327, 341 (1987) (Brennan, J., concurring).

Notwithstanding the seeming clarity of these guiding principles, State supreme courts are deeply divided over the extent to which courts may delve into intra-denominational relationships in resolving disputes over church property.

1. Following the lead of *Jones* and *Serbian Eastern Orthodox*, some courts have recognized clear constitutional limits on judicial inquiry into intra-church ecclesiastical relationships. In *Parent* v. *Roman Catholic Bishop*, for example, the Supreme Court of Maine reviewed a lawsuit brought by trustees of a Roman Catholic parish against the parish's bishop, who had sold church property. 436 A.2d 888 (Me. 1981). The trustees claimed that a "confidential relationship" existed between the bishop and the parishioners such that a constructive trust should be imposed to prevent the bishop from selling additional church property. *Id.* at 889.

Citing *Jones*, *Serbian Eastern Orthodox* and *Blue Hull*, the court held that the First Amendment prohibits any examination into this purported relationship. Such an inquiry, the court held, "would have required the court to assess the scope of the bishop's authority under canon law and the propriety of his exercise of that authority in this case, matters over which the courts of this State have no jurisdiction." *Id.* at 890. The court went on to reason that, because there were no relevant written documents, any such examination would necessarily

consider parol evidence, thereby engendering additional constitutional problems:

> Ascertaining the content of any such parol agreement or trust—express or implied— .... would have required the court to draw inferences from the conduct of both parties over the years .... Such inquiries would have embroiled the court in extensive consideration of religious doctrine, polity and administration.

Id. at 891. Simply put, the court held that the First Amendment precludes an invasive inquiry into intra-faith relationships and courses of dealing—the very kind of inquiry that the Maryland Court of Appeals has mandated here.

Similar limits on judicial inquiry into intra-church relationships were recognized in *Church of God Pentecostal, Inc.* v. *Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998). That case, like this one, concerned a property dispute between a denomination and a congregation. The denomination sought to introduce evidence that the congregation had improperly attempted to siphon members from another congregation affiliated with the denomination. *Id.* at 210-11. The Mississippi Supreme Court affirmed the trial court's refusal to consider such evidence because, among other reasons, it might require the court to consider ecclesiastical matters. *Id.* at 211. Compare FTH Br. 10 (arguing that From the Heart's "unusual" relationship with the denomination is evidenced by the fact that it took in members of other AME Zion congregations).

2. By contrast, appellate courts in other States—including the highest courts of Connecticut and, now, Maryland—have declined to limit the scope of judicial investigation into intra-denominational relationships in the context of church property disputes.

In *New York Annual Conference of the United Methodist Church* v. *Fisher*, the Connecticut Supreme Court reviewed a lower court's ruling that a local church, after disaffiliating

from a denomination, had taken adverse possession of the property, and that the denomination was barred by laches from reclaiming it. 438 A.2d 62, 65 (Conn. 1980). In reversing, the court examined the relationship between the denomination and the congregation, and determined that it was "ambiguous." *Id.* at 71. Then, in stark contrast to decisions such as *Parent* and *Church of God Pentecostal*, the court directed the trial court to conduct an intrusive inquiry into the relationship between the denomination and the local church in an effort to determine whether the denomination had known of the "ambiguity" of the relationship and had acquiesced in it, such that the defenses of estoppel, waiver, unjust enrichment and unclean hands might apply. *Id.* at 75.

A similar inquiry was endorsed in *Fire Baptized Holiness Church of God of the Americas, Inc.* v. *McSwain*, 518 S.E.2d 558, 561 (N.C. Ct. App. 1999). As in *Fisher*, one issue was whether the denomination had been sufficiently vigilant in enforcing the requirements of its constitution. In contrast to decisions such as *Parent* and *Church of God Pentecostal*, the court relied upon the denomination's asserted laxity in ruling against the denomination:

> We find that it would be inequitable, if not unconstitutional, for a court of this state to enforce the *Discipline* against the Shelby church *nunc pro tunc* when the denomination made no effort to enforce it at the time of any violations.

Id. at 561.

The decision of the Maryland Court of Appeals is in league with *Fisher* and *McSwain*, and in conflict with *Parent* and *Church of God Pentecostal*. Here, as noted above, the Maryland court has sanctioned a standardless romp through the ecclesiastical relationships within AME Zion. For example, it has adopted From the Heart's suggestion that the trial court should investigate the "unconventional" relationship between AME Zion and Full Gospel. Thus, to determine whether the trust clause in AME Zion's *Book of Discipline* will be given

legal effect, the trial court on remand must evaluate whether, as From the Heart argued, AME Zion waived its rights under its *Book of Discipline*, Pet. App. 17a-18a, by failing to discipline From the Heart for its purportedly nonconforming conduct. This review will encompass "*all* relevant documents and circumstances," including "the relations between the parties," *id.* at 34a, 35a, and, presumably, the other factors that contributed to the "unconventional relationship." Thus, Maryland courts will now consider whether Full Gospel "was not a typical church within AME Zion" inasmuch as it accepted non-Zionites as members, "used the untraditional name 'Full Gospel,' adopted worship practices that AME Zion considered unconventional," and "departed from AME Zion's traditional modes of behavior." FTH Br. 9-10, 39. Each of these inquiries examines church disciplinary issues, as well as issues of church doctrine and practice, and plainly would not be permitted under *Parent* and *Church of God Pentecostal*, much less under controlling decisions of this Court. See, *e.g.*, *Serbian*, 426 U.S. at 708 (forbidding intrusion into church governance); *Blue Hull*, 393 U.S. at 449-50 (overturning Georgia's "departure-from-doctrine" test because it involved an inquiry into religious practice).[3]

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[3] An additional consideration weighing in favor of granting *certiorari* is the fact that this case would give the Court an opportunity to address, in a new context, the application of neutrality principles under the First Amendment. Although the Court recently has clarified the meaning of neutrality in other First Amendment contexts, *e.g.*, *Zelman* v. *Simmons-Harris*, 122 S. Ct. 2460, 2467 (2002) (neutral funding program); *Good News Club* v. *Milford Cent. Sch.*, 533 U.S. 98, 111-12 (2001) (non-neutral access to school facilities); *Rosenberger* v. *Rector & Visitors*, 515 U.S. 819, 830-33 (1995) (non-neutral funding program), it has not addressed neutrality in the context of church property disputes in over 20 years. This case provides a particularly appropriate vehicle for that task, inasmuch as the Maryland Court of Appeals declined to apply the doctrine of consent-by-affiliation that would have governed a similar dispute between a secular voluntary association and its members. Had it done so, the invasive, unconstitutional inquiry being challenged here would never have been at issue.

3. These features of the decision below also establish its finality for purposes of this Court's review under *Cox Broadcasting*, 420 U.S. at 477, and its progeny. As explained above, see *supra* at 6, petitioners argued to the Court of Appeals that the kind of judicial inquiry sought by respondents would, in and of itself, violate the First Amendment—regardless of the ultimate outcome. But the Court of Appeals, implicitly rejecting that argument, proceeded to require just that kind of intrusive inquiry.

That decision is final for at least two reasons. First, later review of this issue—*i.e.*, the constitutional propriety of this judicial inquiry—will be impossible regardless of the outcome at trial. See 420 U.S. at 481-82 (describing this category of final decisions); *id.* at 506 (Rehnquist, J., dissenting) (acknowledging finality where "later review of the federal issue cannot be had, whatever the ultimate outcome of the subsequent proceedings directed by the highest court of the State"). If the intrusive inquiry mandated by the Court of Appeals goes forward, regardless of whether petitioners or respondents ultimately prevail on the property issues, the constitutional damage will have been done.[4] For, as this Court recognized in *NLRB* v. *Catholic Bishop*, "[i]t is not only the conclusions that may be reached ... which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." 440 U.S. 490, 502 (1979); see also *Rayburn* v. *Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) (noting the constitutional dangers inherent in subjecting a church to "subpoena, discovery, cross-examination, the full panoply of legal process designed to probe the mind of the church"). This case is thus similar to a number of cases in which this Court asserted jurisdiction over a decision that

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[4] To be sure, if respondents prevail at trial, petitioners may still have a First Amendment challenge to the results of that proceeding. But their First Amendment challenge to the proceeding itself will be moot and, therefore, unreviewable in either the Court of Appeals or this Court.

contemplated further proceedings in the trial court because the federal challenge was to the legitimacy of the proceeding itself.[5]

Second, even if petitioners could somehow mount a First Amendment challenge to the *conduct* of those proceedings after the fact, the decision below is appealable because "a refusal immediately to review the state court decision might seriously erode federal policy." *Cox Broad.*, 420 U.S. at 482-85. As explained above, this Court has long held that the First Amendment embodies an important federal policy of avoiding judicial inquiry into matters of religious doctrine, discipline, and practice. That policy would be seriously eroded if decisions like the one below were allowed to go unreviewed until after the improper judicial inquiry occurs.

If left in place, moreover, the Court of Appeals' decision will erode the settled policy—also based on the First Amendment—of protecting the autonomy of "religious organizations ... in ordering their own affairs." *Amos*, 483 U.S. at 341 (Brennan, J., concurring). The decision below will put AME Zion, and indeed all denominations that operate in Maryland, on the horns of a dilemma: Should they deal with pastors and congregations in the manner that they deem fit, in accordance with the mandates of their doctrines and disciplines, or must they now handle wayward pastors and congregations with an iron fist, lest they later be accused of "waiving" provisions of their constitutions? Putting churches to such a Hobson's choice raises serious First Amendment

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[5] *E.g.*, *Mitchell* v. *Forsyth*, 472 U.S. 511, 525-28 (1985) (order denying motion to dismiss based on qualified immunity is final because "entitlement not to be forced to litigate" "cannot be effectively vindicated after the trial has occurred"); *Helstoski* v. *Meanor*, 442 U.S. 500, 507-08 (1979) (order denying immunity under Speech and Debate Clause is appealable because that Clause was meant to protect congressmen "'from the burden of defending themselves'"); *Abney* v. *United States*, 431 U.S. 651, 659-62 (1977) (pretrial order denying motion to dismiss for double jeopardy is appealable because the Double Jeopardy Clause protects against the second trial itself).

questions, which this Court has long recognized as an ample basis for asserting jurisdiction. *Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 56 (1989); *Cox Broad.*, 420 U.S. at 485-86; *Miami Herald Publ'g Co.* v. *Tornillo*, 418 U.S. 241, 246-47 & n.6 (1974).

* * * * *

The decision below throws open the floodgates to searching judicial examination of numerous protected aspects of church governance, including church administration, discipline, doctrine and practice. In the process, it widens conflicts over the proper application of Jones v. Wolf, and the proper limitations on the ability of civil courts to scrutinize ecclesiastical relationships. The Court should grant certiorari to resolve the conflicts over these issues, and to make clear to the lower courts that the First Amendment forbids such intrusive, entangling inquiries.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

COURT OF APPEALS OF MARYLAND

No. 3, Sept. Term, 2000.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*

v.

AFRICAN METHODIST EPISCOPAL ZION CHURCH,
Mid-Atlantic II Episcopal District, *et al.*

July 24, 2002.

Argued Before BELL, C.J., ELDRIDGE, RODOWSKY,* RAKER, WILNER, CATHELL and HARRELL, JJ.

BELL, C.J.

The issue presented in this case involves the ownership of church property after a local church, incorporated under the Maryland Religious Corporations Law, Md.Code (1957, 1999 Replacement Volume) Title 5, Subtitle 3 of the Corporations and Associations Article,[1] but affiliated with a religious denomination, terminates that affiliation. The Circuit Court for Prince George's County determined that the church property belonged to the religious denomination. We issued the writ of certiorari to review the issue. We shall reverse.

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* Rodowsky, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

[1] Unless otherwise indicated, future references will be to this statute.

I.

A.

From The Heart Church Ministries, Inc., one of the appellants ("From The Heart"), was organized in Marlow Heights, Maryland in 1981, as an affiliate of the African Methodist Episcopal Zion Church, one of the appellees[2] ("A.M.E. Zion"). It was organized by Reverend Doctor John A. Cherry, the other appellant, its pastor, to whom A.M.E. Zion had given a Pastor's Certificate of Appointment and whom it had reappointed to that position for every term thereafter until the withdrawal, and the church's 24 members. On May 2, 1983, trustees, who had been elected by the congregation a year earlier, formally incorporated the church under the Maryland Religious Corporations Law, *see* § 5-304,[3] as Full Gospel

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[2] The other appellees are the Philadelphia-Baltimore Annual Conference of the A.M.E. Zion Church and Full Gospel A.M.E. Zion Church. They are included in any future reference to the "appellees" or A.M.E. Zion. Numerous other denominations participated as *amici curiae*, including the United Methodist Church, the Seventh-Day Adventists, Protestant Episcopal, American Baptist, Presbyterian Church, Church of Jesus Christ of Latter-Day Saints, Maryland Catholic Council, Board of Incorporators of A.M.E. Church, C.M.E. Church, and the Worldwide Church of God.

Full Gospel A.M.E. Zion Church was incorporated under Maryland law after the original Full Gospel A.M.E. Zion Church, the predecessor to From the Heart Ministries, Inc., had changed its name and withdrawn from the A.M.E. Zion denomination. A pastor has been appointed by A.M.E. Zion to replace Rev. Cherry, the founding pastor. Appellee Full Gospel contends that it remains the congregation established in 1981, albeit much reduced in numbers, and continues a member of the A.M.E. Zion Church. For that reason, it maintains that it is "entitled to ensure that the property their contributions helped to acquire remains subject to the congregation's pledge to hold property in trust for the good of the entire denomination."

[3] Section 5-304. Articles of incorporation, filing and contents provide

> (a) The trustees shall file articles of incorporation for record with the Department.

A.M.E. Zion Church, Inc.[4] Its purpose, as stated in the Articles of Incorporation ("charter"),[5] was:

> "To conduct a church for Christian religious purposes and to perform all necessary and allowable activities in connection therewith or incidental thereto, and to engage

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(b) The articles of incorporation shall contain:

(1) The plan of the church;

(2) The address of the principal place of worship of the church; and

(3) The name and address of the resident agent of the church.

(c) When the Department accepts the articles of incorporation for record, the trustees become a body corporate under the name stated in the articles. Section 5-302(c) prescribes the contents of the "plan of the church":

"(1) The purposes for which the religious corporation was formed;

"(2) The name of the religious corporation and the church;

"(3) The time and manner of election and succession of trustees; and

"(4) The exact qualifications of individuals eligible:

"(i) To vote at elections; and

"(ii) To be elected to office."

[4] Section 5-301 defines "church" as "any church, religious society, or congregation of any sect, order, or denomination."

[5] Section 5-302 requires the adult members of a church who form a religious corporation to prepare a plan of the church, to include:

"(1) The purposes for which the religious corporation is formed;

"(2) The name of the religious corporation and the church;

"(3) The time and manner for election and succession of trustees; and

"(4) The exact qualifications of individuals eligible:

"(i) To vote at elections; and

"(ii) To be elected to office."

in any other lawful activity in accordance with the Disciplines of the African Methodist Episcopal Zion Church.

"To do anything permitted by Subtitle 3 of Title 5 of the Corporations and Associations Article of the Annotated Code of Maryland, the Religious Corporations law.[6]"

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[6] Pursuant to section 5-306 of the Corporations & Associations Article, that means that it had the power, through its trustees, to:

"(1) have perpetual existence under the name of the religious corporation;

"(2) purchase, take, or acquire by gift, bequest, or in any other manner and hold any interest in any assets in the State;

"(3) use, lease, mortgage, sell, or convey the assets in the manner that the trustees consider most conducive to the interest of the religious corporation;

"(4) Generally manage any assets of the religious corporation; and

"(5) Adopt rules and ordinances for conducting their affairs as necessary and convenient to accomplish the purpose of the religious corporation, including:

"(i) Appointing the time and place of a meeting of its members; and

"(ii) Determining the number of members necessary to constitute a quorum.

"(b) The provisions of this section do not authorize any sale, mortgage, or other disposition of any asset of the religious corporation which is held under an instrument prohibiting that sale, mortgage, or other disposition.

"(c) By resolution, the trustees may authorize one or more of their members to:

"(1) Execute any instrument required to be executed by the trustees, including any deed, mortgage, or other conveyance of assets which are to be sold, transferred, or encumbered; and

"(2) Attest and affix to the instrument the corporate seal, if any."

Shortly after its incorporation, Full Gospel, on May 13, 1983, purchased "for use in its growing ministry" property located at 5311 St. Barnabas Road in Oxen Hill, Maryland. The deed to that property listed as owner Full Gospel A.M.E. Zion Church, Inc., a Maryland Religious Corporation. Full Gospel subsequently acquired additional, adjacent property, which it also took in its name alone, and, between 1988 and 1999, other real and personal properties, which were similarly titled. None of the deeds to the real properties, nor the documents reflecting ownership of any of the personal property, moreover, contained a clause creating a trust in favor of, or providing for reversion to, A.M.E. Zion, which did not make any direct financial contribution to the purchase of any of the property.

In 1991, Full Gospel's Board of Trustees adopted church By-laws and amended its Articles of Incorporation.[7] The By-laws broadened Full Gospel's purpose, stating that it "is to

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[7] Section 5-308. Plan or charter amendment

"(a) A religious corporation may amend its plan or charter as provided in this section.

"(b) A majority of the trustees of a religious corporation proposing to amend its plan or charter shall:

"(1) Adopt a resolution which declares that the amendment is advisable; and

"(2) Call a meeting of the adult members of the religious corporation to vote on the amendment.

"(c) Ten days written notice of the time, place, and purpose of the meeting shall be given to each adult member of the religious corporation by:

"(1) Delivering it to him in person;

"(2) Leaving it at his residence or usual place of business; or

"(3) mailing it to him at his address as it appears in the record book.

"(d) The proposed amendment shall be approved by the affirmative vote of a majority of the adult members present at the meeting."

conduct a church for Christian religious activities," as contrasted with the requirement to act "in accordance with the Discipline of the African Methodist Episcopal Zion Church." Pursuant to the By-laws, moreover, the trustees were vested with full control of Full Gospel's church property. The By-laws provided that, in furtherance of the church's purpose:

> "[T]he Corporation may receive property by gift, devise or bequest, invest and reinvest the same and apply the income and principal thereof, as the Board of Trustees may from time to time determine, either directly or through contributions through any charitable organization or organizations, exclusively for religious, charitable, and educational purposes, and engage in any lawful act or activity for which corporations may be organized under the general laws of the State of Maryland.
>
> "In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Section 2-103 of the Maryland General Corporation Law as now in effect or as may hereafter be amended."

The amendment of the Articles of Incorporation deleted all reference to the A.M.E. Zion denomination. In addition to the same broad statement of purpose as in the By-laws, the amended Articles addressed specifically the disposition of church property on the dissolution of the corporation. As amended, the Articles provided:

> "In the event of dissolution or final liquidation of the Corporation, all remaining assets of the Corporation [the church] shall . . . be distributed to such organization or organizations organized and operated exclusively for religious, or charitable, or educational purposes as shall at the time qualify as an exempt organization or organizations . . . as the Board of Trustees shall determine."

Full Gospel amended its Articles of Incorporation again on June 15, 1998. This amendment adopted the church's present name, From The Heart Ministries, Inc., and provided, consistent with its By-laws, that the church would have all of the general powers of a Maryland corporation, as enumerated in § 2-103 of the Corporations & Associations. [sic] Article.[8] The 1998 charter amendment, like the predecessor

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[8] That section provides:

"§ 2-103. *General powers*

"Unless otherwise provided by law or its charter, a Maryland corporation has the general powers, whether or not they are set forth in its charter, to:

"(1) Have perpetual existence, although existence may be limited to a specified period if the limitation is stated in a charter provision adopted after May 31, 1908;

"(2) Sue, be sued, complain, and defend in all courts;

"(3) Have, use, alter, or abandon a corporate seal;

"(4) Transact its business, carry on its operations, and exercise the powers granted by this article in any state, territory, district, and possession of the United States and in any foreign country;

"(5) Make contracts and guarantees, incur liabilities, and borrow money;

"(6) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any or all of its assets;

"(7) Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of any or all of its assets;

"(8) Acquire by purchase or in any other manner, and take, receive, own, hold, use, employ, improve, and otherwise deal with any interest in real or personal property, wherever located;

"(9) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock and other interests in and obligations of other Maryland and foreign corporations, associations, partnerships, and individuals;

"(10) Subject to the limitations provided in this article, acquire any of its own stock, bonds, notes, and other obligations and securities;

1991 amendment did with respect to Full Gospel, also expressly authorized From The Heart to distribute its assets and property, upon dissolution or final liquidation, to such charitable organizations as its Board of Trustees should determine. Moreover, the 1998 amendment gave the Board of Trustees full power to act on behalf of the church and to conduct any business matters of the church, to adopt By-laws for the church, and to amend, or promulgate new, Articles of Incorporation for the church.

"(11) Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes specified in its charter, and take and hold real and personal property as security for the payment of funds so invested or loaned;

"(12) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

"(13) Make gifts or contributions in cash, other property, or stock or other securities of the corporation to or for the use of:

"(i) The United States, this State, another state of the United States, a territory, possession, or district of the United States, or any institution, agency, or political subdivision of any of them; and

"(ii) Any governmental or other organization, whether inside or outside the United States, for religious, charitable, scientific, civic, public welfare, literary, or educational purposes;

"(14) Elect its officers and appoint its agents, define their duties, determine their compensation, and adopt and carry into effect employee and officer benefit plans;

"(15) Adopt, alter, and repeal bylaws not inconsistent with law or its charter for the regulation and management of its affairs;

"(16) Exercise generally the powers set forth in its charter and those granted by law; and

"(17) Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its charter."

B.

The A.M.E. Zion Church,[9] founded in 1898, is a religious denomination, international in scope, made up of affiliated churches. It's organizational structure is hierarchical, although the church itself characterizes it as "connectional." Under this structure, the affiliated local churches report to one of twelve bishops, who in turn report, quadrennially, every four years, to the General Conference, the governing body of A.M.E. Zion. Comprised of clergy and lay delegates from around the world, the responsibilities of the General Conference include revising the *Book of Discipline of the African Methodist Episcopalian Zion Church,* A.M.E. Zion's governing policies. Between sessions of the General Conference, A.M.E. Zion is governed by its bishops, who also oversee the various Annual Conferences, which meet yearly to address concerns of the clergy and laity located within the various regions into which the administration of the church is divided.

The rules and regulations of the A.M.E. Zion denomination are codified, and published, in its *Book of Discipline of the African Methodist Episcopalian Zion Church.* The "*Book of Discipline*" is published quadrennially. Because they were applicable either when property was purchased or while it was being held prior to From the Heart's disaffiliation, several editions of the *Book of Discipline,* specifically those dating from 1980 through 1996, are relevant to the resolution of the case *sub judice.* Given that the applicable provisions of each

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[9] The African Methodist Episcopal Zion Church can trace its roots back to the Methodist Church, which was established in England by John Wesley in 1738. The discriminatory treatment accorded black members of the Methodist Church led Richard Allen, in 1794, to separate from that church and found the African Methodist Episcopal Church. Subsequently, in 1796, James Varick separated from the African Methodist Episcopal Church and founded the African Methodist Episcopal Zion Church.

of those editions are identical and both parties rely only on the 1996 edition of the Book of Discipline, however, we likewise shall restrict our consideration to that edition.

The 1996 *Book of Discipline* addresses, as did the predecessor and successor editions, the requirement that places held or hereafter acquired by a local church, for the purpose of worship or parsonage, be held in trust for A.M.E. Zion denomination. Paragraph 494 provides:

> "All written instruments of conveyance by which premises are held or hereafter acquired, for use as a place of Divine worship for members of the African Methodist Episcopal Zion Church or for other church activities, shall contain the following trust clause:
>
> > 'In trust, that said premises shall be used, kept, maintained, and disposed of as a place of divine worship for the use of the ministry and membership of the African Methodist Episcopal Zion Church in America; subject to the discipline, usage and ministerial appointments of said church as from time to time authorized and declared by the General Conference of said church, and the Annual Conference in whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserve[s] no right or interest in said premises.'"

The same requirement is imposed on the deeds for parsonage property by ¶ 495.1. It provides:

> "1. All written instruments by which premises are held or hereafter acquired as a parsonage for the use and occupancy of the ministers of the African Methodist Episcopal Zion Church shall contain [the same trust clause as set out in ¶ 494, creating a trust, solely for the benefit of the grantee, over such parsonage property]."

Under ¶ 493, "[i]t is the duty of the *Pastor and Presiding Elder* to see that our Church Property is deeded according to our Book of Discipline, and duly incorporated in accordance with the laws of the State or the Territory in which it is situated." The *Book of Discipline* also provides for the eventuality that the trust clause is, for one reason or another, omitted from a deed. In ¶ 495.2, it states:

> "2. However, the absence of the trust clause stipulated in ¶ 494 and ¶ 495 in deeds and conveyances previously executed, shall in no way exclude a local church from, or relieve it of, its African Methodist Episcopal Zion Church Connectional responsibilities nor shall it absolve a local congregation or board of trustees of its responsibility to the African Methodist Episcopal Zion Church, provided that the intent and desire of the founders and/or the later congregations and board of Trustees is shown by any or all of the following indications: (a) The conveyance of the property to the trustees of the local African Methodist Episcopal Zion Church or any of its predecessors; (b) The use of the name, customs, and policy of the African Methodist Episcopal Zion Church in such a way as to be thus known to the community as a part of this denomination; (c) The acceptance of the pastorate or ministers appointed by a bishop of the African Methodist Episcopal Zion Church, or employed by the Presiding Elder of the district in which it is located."

In addition, the *Book of Discipline* contains provisions that do not directly require conveyance of church property in trust, but nevertheless have been argued to be relevant to the determination of the ownership of church property upon withdrawal of a local church from the A.M.E. Zion church.

Under ¶ 495.3, it is required that property be sold "in conformity with the Discipline." Paragraph 498.1 is to similar effect, providing:

> "1. The Trustees shall not in any case whatsoever dispose of Church Property by sale or otherwise without the consent of the majority of the Members in Full Connection, expressed by vote in a meeting called for that purpose, of which due notice has been given. Provided, however, that no congregation, pastor, nor Trustee Board or agent of the congregation shall mortgage or sell *any* property of the A.M.E. Zion Church without confirmation of the Quarterly Conference and written consent of the Bishop of the District or the Annual Conference."

Finally, ¶ 498.2, applicable to the situation where there is no pastor because there is no local congregation, provides:

> "2. It is further provided that where there is a Church or circuit, or a Station, without a Pastor, because the membership has withdrawn and scattered and there is no Congregation, and no need for an appointment of a Preacher to this place, that the Conference in which the Church is located may pass a resolution declaring the Church or Circuit, or Station discontinued or abandoned and ordering the sale of the property, and approved by the Bishop; the Bishop of the District shall give a deed to the purchaser for the same., [sic] and the proceeds from the sale of said property turned over to the Annual Conference for its disposition."

C.

Upon being notified by From The Heart that it intended to withdraw from the A.M.E. Zion denomination,[10] the appellee requested From The Heart to turn over, and transfer ownership of, the real and personal church property it had amassed, to it. From The Heart declined to do so and, instead, filed, in the Circuit Court for Prince George's County, an action,[11] seeking, among other things, a declaratory judgment that it was the sole and rightful owner of the real and personal property it had acquired, to quiet title to that real and personal property and preliminary injunctive relief.[12]

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[10] Section 5-311 addresses the situation when members of a church separate from that church, providing:

> "(a) *Separation and new organization.*—Members of a church may separate from the church, form a house of worship, and employ a minister if:
>
> "(1) They are of sufficient number to form a house of worship and maintain a minister; and
>
> "(2) All debts and contracts incurred by them as members of the original church are discharged.
>
> "(b) *New church entitled to benefits of incorporation.*—When incorporated, the new church is entitled to the benefits of this subtitle relating to religious corporations."

It has no relevance to the issue this case presents.

[11] In addition to A.M.E. Zion, named as defendants were the African Methodist Episcopal Zion Church Mid-Atlantic II Episcopal District and Bishop Milton A. Williams, Sr. Both of the latter defendants moved to dismiss the action. Subsequently, as to them, the Circuit Court for Prince George's County did so, with prejudice.

[12] In addition to seeking a declaration as to property ownership and to quiet title, the appellants pled, and pursued, claims of Misappropriation of Name. [sic] or Likeness, Service Mark Infringement, Unfair Competition, as to which the preliminary injunctive relief was sought. The complaint also alleged claims for Intentional Interference with Economic Relations, Unjust Enrichment, accounting and sought a declaratory judgment as to the right to the "Full Gospel" name.

A.M.E. Zion answered and filed a counterclaim, in which, among other relief, it sought its own declaratory judgment with respect to property ownership.[13] Moving to intervene, appellees Philadelphia-Baltimore Annual Conference and the newly incorporated Full Gospel A.M.E. Zion Church, filed a separate action against the appellants, also seeking, among other relief, declaratory judgment with respect to property ownership, which it moved to consolidate with the pending actions. A.M.E. Zion later filed a motion to dismiss the declaratory judgment and quiet title counts of From the Heart's complaint and the appellants moved to dismiss both A.M.E. Zion's counterclaim and the separate action.

The Circuit Court granted the motion to intervene and consolidated the actions. Then, pursuant to Maryland Rule 2-322(c),[14] it treated the motions to dismiss as motions for summary judgment.[15] The court concluded that there was no

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[13] The counterclaim also asserted claims for ejectment, detinue, conversion of personal property, breach of fiduciary duty, accounting, and sought a declaratory judgment on the use of the A.M.E. Zion name.

[14] Maryland Rule 2-322(c) provides:

> ". . . [I]f, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501."

[15] Maryland Rule 2-501(a) provides:

> "(a) *Motion.*—Any party may file at any time a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if filed before the day on which the adverse party's initial pleading or motion is filed."
>
> Maryland Rule 2-501(e) provides that:
>
> "[t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine

genuine dispute as to any material fact with regard to the following:

> "[D]uring its affiliation with the A.M.E. Zion Church, (From the Heart) accepted the pastors appointed by the bishops of the A.M.E. Zion Church . . . used the name, customs and polity of the A.M.E. Zion Church in such a way as to be known in the community as a part of the A.M.E. Zion denomination . . . [and,] at all material times, [the Discipline] included provisions requiring all local church property to be held in trust for the A.M.E. Zion Church."

Accordingly, it granted summary judgment: in favor of A.M.E. Zion, African Methodist Episcopal Zion Church Mid-Atlantic II Episcopal District and Bishop Milton A. Williams, Sr., as to the declaratory judgment and quiet title counts of the appellants' complaint;[16] in favor of A.M.E. Zion, as to the declaratory judgment, ejectment and detinue counts of its Answer and Counterclaims; and in favor of the Philadelphia-Baltimore Annual Conference and the newly incorporated Full Gospel A.M.E. Zion Church, as to the ejectment and misappropriation/wrongful conversion counts of their separate action. In addition, the court declared

> "that, under the neutral principles of property law, all property acquired by From the Heart Church Ministries, Inc. including all property acquired under the name Full Gospel A.M.E. Zion Church, prior to July 8, 1999, is subject to a trust in favor of the A.M.E. Zion Church, as expressed in *The Book of Discipline of the African Methodist Episcopal Zion Church,* which trust has the

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dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law."

[16] The court had previously dismissed all claims against the Episcopal District and Bishop Williams, thus, removing them from the case. Therefore, it is unclear whether this ruling has any practical effect.

> legal effect of requiring the property to stay within the A.M.E. Zion denomination and preventing From the Heart Church Ministries, Inc., from retaining the property upon its decision to end its affiliation with the A.M.E. Zion Church."

While the appellant's appeal to the Court of Special Appeals was pending in that court, we issued the Writ of Certiorari, on our own motion, to address the important issue of whether, when a local church withdraws from a religious denomination, the property belongs to the local church or to the denomination. *From the Heart v. African Methodist*, 358 Md. 380, 749 A.2d 171 (2000). As already indicated, we shall reverse.

II.

In this Court, From the Heart argues that summary judgment in favor of A.M.E. Zion was inappropriate. It asserts that A.M.E. Zion, an hierarchical denomination, failed to avail itself of any one of the three methods this Court has held is available to such denominations to maintain control of local church property when the local church withdraws from the affiliation.[17] In particular, From the Heart points out that

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[17] The three methods were enumerated in *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 663, 241 A.2d 691, 699 (1968) as follows:

> "1. It may require reverter clauses in the deeds to the property of the local churches.
>
> "2. It may provide in its constitution or by some other authoritative source for the reverting of the local church property to the hierarchical body upon withdrawal by local congregation with an implied consent by the local church to this provision.
>
> "3. It may obtain from the General Assembly an act providing for such a result."

See also Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church, Inc., 348 Md. 299, 306 n. 7, 703 A.2d 194, 198 n. 7 (1997).

there is no provision calling for the reversion of the property amassed by the local church in the deeds of the property or A.M.E. Zion's *Book of Discipline* and there is no Maryland statute that so provides for the benefit of the A.M.E. Zion denomination, as there is with regard to the Methodist denomination, for example. *See* §§ 5-321-328 of the Corporations and Associations Article.[18] More specifically, it notes that it did not hold its property in trust for A.M.E. Zion and

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[18] Section 5-326 provides:

> "All assets owned by any Methodist Church, including any former Methodist Episcopal Church, Methodist Protestant Church, Methodist Episcopal Church, South, the Washington Methodist Conference, or Evangelical United Brethren Church, whether incorporated, unincorporated, or abandoned:
>
> "(1) Shall be held by the trustees of the church in trust for the United Methodist Church; and
>
> "(2) Are subject to the discipline, usage, and ministerial appointments of the United Methodist Church, as from time to time authorized and declared by the general conference of that church."

Section 5-327 is complementary. It provides:

> "The absence of a trust clause in any deed or other conveyance executed before June 1, 1953, does not relieve or exclude a local church in any way from its Methodist connectional responsibilities or from the provisions of this part and does not absolve a local congregation or board of trustees of its responsibility to the United Methodist Church, if such an intent of the founders or the later congregations and boards of trustees is indicated by:
>
> "(1) The conveyance of the assets to the trustees of the local church or any of its predecessors;
>
> "(2) The use of the name, customs, and polity of the United Methodist Church in such a way as to be known to the community as part of this denomination; or
>
> "(3) The acceptance of the pastorate of ministers appointed by a bishop of the United Methodist Church or employed by the superintendent of the district in which the local church is located."

that A.M.E. Zion was aware of that fact, thus consenting to it. From the Heart argues, in any event, that, rather than establishing, by clear and convincing evidence, an intent to create a trust, the evidence proved the opposite, that From the Heart had no intention to hold its property in trust for A.M.E. Zion.[19]

From the Heart further maintains that, even if *Eldership* method two were implicated, and a finding in favor of A.M.E. Zion were possible on the merits, a trial, nevertheless would be required. In that regard, it contends that genuine disputes as to material facts exist with respect to the affirmative defenses of consent, waiver and estoppel and that those disputes can only be resolved at trial. From the Heart also believes that a trial is required with regard to whether From the Heart, in its former existence as Full Gospel, consented to the property provisions in the *Book of Discipline* and with regard to whether, because its interest was not expressed in the proper form, of which A.M.E. Zion was aware, A.M.E. Zion waived its rights to the property or is estopped to rely on the property provisions of the *Book of Discipline.*

Moreover, the appellant, From the Heart, contends that there is a factual dispute concerning whether A.M.E. Zion

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[19] From the Heart submits that the "trust" provisions, upon which A.M.E. Zion and the trial court relied, "do not even refer or relate to personal property, the court had no legal basis to decide that personal property was intended to be held in trust." The appellees rejoin that the obligation of the trustees, as expressed in the Book of Discipline, is to "take charge of and protect the Church Property with all of its appurtenances in trust for the membership," which necessarily includes personal property. They also rely on ¶ 498.2 (which "secures the Annual Conference's right to assume control over the real estate [of discontinued or abandoned congregations], sell it and retain the proceeds of such sale) and .3 (entitling the Annual Conference to assume the discontinued or abandoned congregation's interest in "any gift, legacy, devise, annuity or other benefit). Given our resolution of the case, we need not, and, so, do not, resolve this issue.

dealt with From the Heart in an hierarchical manner, noting the evidence that A.M.E. Zion, as reflected in Bishop Foggie's Report to the 1988 Quadrennial Conference, maintained an unconventional relationship with From the Heart, with respect to, among other matters, the manner in which it held its property.[20]

The appellees, of course, see the issue differently. They characterize the principle issue in this case as whether local church property impressed with a trust in favor of the religious denomination with which the local church has affiliated must remain with the denomination when the majority of the membership of the local church withdraws from the denomination. The answer required by application of the neutral principles approach is, yes, they submit, citing and quoting *Brown v. Scott*, 138 Md. 237, 242, 113 A. 727, 730 (1921) ("any number of the members of a church, whether small or great, have the power to join whatever church they may please, however it may be in disregard of the rules and constitution of the church to which they may have formerly belonged, but they cannot by so doing affect the rights of others, nor divert the use of property held in trust for a particular and specified purpose, to another and different purpose or use"). Under that approach, it must be determined if the local church property is held in trust for the use of the parent church, the religious denomination.

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[20] In the Report, Bishop Foggie stated:

> "All kinds of misconceptions arose: criticism of the A.M.E., taking in members already Zionites, worship practices not in accordance with Zion's tradition, presumption to hold an International Institute for pastors and leaders, the property was not correctly deeded to the Denomination, etc.
>
> "What those who were misinformed or ill-informed did not know was that Brother Cherry did not move without calling me or coming to Pittsburgh to discuss matters with me."

The appellees dispute that, in order that local church property revert to the religious denomination when the local church withdraws from that denomination, there must be an explicit provision calling for such reversion in the denomination's constitution or other authoritative source. On the contrary, they submit, all that is required is unconditional trust language like that in the *Book of Discipline* in this case. Indeed, the appellees argue that a reverter upon withdrawal rule is not a neutral principle of law.

Summary judgment was appropriately granted in the case *sub judice* based on two facts that the appellants concede, the appellees argue. From the Heart accepted the pastoral appointments each year and it used the A.M.E. Zion name, customs and polity so that it was known in the community as a part of the denomination. The appellees maintain that anyone who joins a religious denomination is bound by all of the rules of that denomination. They assert that From the Heart knew about the trust language and the trust requirement in the A.M.E. Zion *Book of Discipline.* Thus, the appellees maintain, its failure to deed the church property correctly or A.M.E. Zion's failure to enforce the deed requirement does not raise any issue of consent, waiver or estoppel, the terms and structure of the *Book of Discipline* being so clear and plain that once the conditions set out in ¶ 494 and ¶ 495 are satisfied, i.e. acceptance of pastoral appointments and use of the A.M.E. Zion name, customs and polity, awareness that the church doctrine required church property to be held in trust, a trust exists, even when no trust clause is included in the property deeds. In fact, the appellees argue that the only way to avoid the creation of the trust is to make sure that the conditions are not complied with. They conclude, "having prospered by its affiliation with A.M.E. Zion for nearly 20 years, and having participated in the functioning of the denomination throughout, appellants may not now pretend that Full Gospel was exempt from any of A.M.E. Zion's rules."

III.

The issue this case presents is not a new one for this Court, albeit it has never before been presented in this precise context. We most recently addressed it in *Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc.*, 348 Md. 299, 703 A.2d 194 (1997). In that case, we framed the question as "whether the trustees and local congregation lost the rights given them by the deed of the property and confirmed by the Religious Corporation Law and the corporate charter, to own, use and control that property, when the pastor, trustees, officers, and a majority of the congregation of the local church withdrew from . . . affiliation [with the denomination], hierarchical in form, with which it had been affiliated for more than one hundred years. *Id.* at 301, 703 A.2d at 195. In answering the question, "no," thus reversing the judgment of the Court of Special Appeals, which had reversed the summary judgment entered by the Circuit Court, we set out the appropriate analytical framework:

> "it is clear that the resolution of church property disputes demand an analysis that involves the review of all relevant documents and circumstances. Unless the deed to the property clearly provides for the holding of the property in trust for the parent church, it is not enough to consider simply the form of the church government, the constitution or other authoritative sources pertinent to the parent church's claim to the property, consideration must also be given to the Religious Corporations Law, the relations between the parties, and the local church charter. The latter at the very least provides insight into the relations between the parties and may evidence the local church's consent to the form of government and to

> be bound by provisions in the parent church's constitution or other authoritative sources pertaining to the ownership and control of its property."

Id. at 320, 703 A.2d at 204.

In formulating this analytical framework, the Court began with a review of the Maryland precedents, which resulted in a confirmation of the principles enunciated in *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 663, 241 A.2d 691, 699 (1968) (*Eldership* I) and *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 165, 254 A.2d 162, 165 (1969), *aff'd*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (*Eldership* II). *Eldership I* started with the proposition that it is clear that incorporation under the General Religious Corporations Law applicable to all religious groups results in the trustees and the local congregation having ownership and control of the property of the local church. 249 Md. at 658, 241 A.2d at 696. *See,* to the same effect, *Eldership II*, 254 Md. at 174, 254 A.2d at 169 ("By the nature of the law in regard to the formation of corporations generally, the religious corporation formed under it is controlled by trustees elected by the local membership."). We concluded that, of the "[a]t least three kinds of internal structure, of 'polity'"—congregational, presbyterial, and episcopal—identified in *Eldership I, see* 249 Md. at 662, 241 A.2d at 698, "Maryland law contemplates a congregational form of church government." *Mt. Olive*, 348 Md. at 314, 703 A.2d at 201.

The ownership and control of such corporations need not remain perpetually with the trustees, however. *Id.* at 315, 703 A.2d at 202. That point, we noted, is clearly made by the enumeration in *Eldership I* of three ways an hierarchical denomination may insure its control over local church property, *id.*; *see also* 249 Md. at 663, 241 A.2d at 699, as well as by the recognition that "the nature, extent, and consequences

of an affiliation are . . . matters to be determined by the trustees and the congregation, in conjunction with the denomination or parent church with which the local church chooses to affiliate," ordinarily is a matter of contract. *Mt. Olive*, 348 Md. at 316, 703 A.2d at 202. *See also Eldership I*, 249 Md. at 672, 241 A.2d at 704; *Eldership II*, 254 Md. at 176, 254 A.2d at 170. The "polity" or the form of the church government of the particular denomination, though not controlling, is an important consideration when deciding whether there is a contract which alters the ownership and control of the property, at least when there is no express language bearing on the subject in the deed conveying the property. *Mt. Olive*, 348 Md. at 317, 703 A.2d at 203, (citing and quoting *Eldership I*, 249 Md. at 662, 241 A.2d at 698).

That the form of church government is not dispositive was illustrated by *Eldership I.* There, although the General Eldership of the Church of God was hierarchal in nature, its constitution did not address the ownership and control of local church property, beyond recommending both that such property be deeded in trust to trustees and the insertion in such deeds of provisions requiring reversion to the appropriate annual eldership upon the church's becoming extinct or failure to remain doctrinally compatible, the local charter of one of the local churches was explicit in its inclusion of a statement that affiliation with a religious denomination would not affect its control and ownership of its property. *Mt. Olive*, 348 Md. at 317-18, 703 A.2d at 203, (citing *Eldership I*, 249 Md. at 665-66, 241 A.2d at 700) To the *Eldership* Court, it was "plain that it was never contemplated that the property of the local churches should be subject to the control of the Eldership." 254 Md. at 170, 254 A.2d at 168.

Babcock Mem. Presbyterian Church v. Presbytery of Baltimore of the United Presbyterian Church, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied,* 465 U.S. 1027, 104 S.Ct. 1287, 79 L.Ed.2d 689 (1984) and *Polen v. Cox*, 259 Md. 25,

31-32, 267 A.2d 201, 204-05 (1970), we proffered, "are examples of hierarchal denominations utilizing one of the accepted methods to maintain ownership and control of local church property" and also demonstrate the necessity "that there be provided evidence of the consent of the local church to [the provision on which the denomination's claim is based]," *Mt. Olive*, 348 Md. at 318-19, 703 A.2d at 203-04, which consent may be express or implied. *Id.* at 319, 703 A.2d at 204. In *Babcock*, express consent to a provision in the religious denomination's constitution prohibiting sale, mortgage or encumbrance of local church property without the consent of the Presbytery was supplied by a provision in the charter of the local church stating that the local church should "forever remain a Presbyterian Church in accordance with the Standards of the Presbyterian Church of the United States" and a by-law affirming the local church's affiliation with the United Presbyterian Church of the United States and acknowledging the subordination of the by-laws to the Constitution of the United Presbyterian Church. *Id.* at 318-19, 703 A.2d at 203-04, (citing and quoting *Babcock*, 296 Md. at 580, 577, 579, 464 A.2d at 1012, 1011, 1013).

The minutes of the General Assembly of the parent church which denied "the right of any local church as a whole to withdraw from the General Assembly" provided the basis for parental church control of the local church property in *Polen*. *Mt. Olive*, 348 Md. at 318, 703 A.2d at 203,(quoting *Polen*, 259 Md. at 34, 267 A.2d at 206). The local church's consent to that provision "was implied and was inferred from the relationship between the parent church and the local congregation." Id. at 319, 703 A.2d at 204,(citing *Polen*, 259 Md. at 36, 267 A.2d at 207).

With this background, we turned to a consideration of the decision of the intermediate appellate court. As indicated, that court reversed the trial court's grant of summary judgment, but on a ground different from that on which the

trial court relied. The Circuit Court granted summary judgment on two grounds, the absence of trust language in the deeds to the church property and the failure of the applicable Book of Discipline to provide for the reversion of the property in the event of a withdrawal from the denomination. Although agreeing with the Circuit Court that the deeds supported the retention of the church property by the local church and assuming the correctness of its finding with regard to the Book of Discipline, the Court of Special Appeals reached the opposite conclusion, based on a provision in the local church's certificate of incorporation.[21]

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[21] That provision was:

> "Know all men by these presents,
>
> "That the members of the African Methodist Episcopal Church situated at Fruitland Wicomico County State of Maryland . . . at the church building known as Mount Olive on the thirteenth day of April Eighteen hundred and ninety four . . . then and there resolved to organize and constitute themselves as a body politic or corporate and for that purpose elected Ebin Stanford, William Cornish, William Cottman, Nathaniel Stanford, S.C. Bulter and Ephraim Banks as Trustees in the name and on behalf of the said Mount Olive African Methodist Episcopal Church and congregation under the provisions of the Public General laws of Maryland and at the said meeting adopted the following regulations, to Wit:
>
> * * * * * *
>
> "4. The name of this Corporation shall be Mount Olive African Methodist Episcopal Church of Fruitland and the Congregation Mount Olive.
>
> "5. The power and authority of said Trustees shall be in subjection to the discipline of said church and the property held by them in trust for the use of the ministry and membership of said church as a place of worship and as a parsonage or dwelling house for the preacher subject to the ministerial appointment of the proper authorities in said church."

This Court, in rejecting the intermediate appellate court's rationalization, noted its satisfaction that the trial court was legally correct. 348 Md. at 323, 703 A.2d at 206. In making that determination, we reviewed the arguments made to the trial court, concluding that "[t]he major thrust . . . was that the A.M.E. Discipline . . . mandates a result in its favor." *Id.* By confirming the legal correctness of the trial court's ruling, acknowledging that it responded to the arguments presented, rejecting in the process, the contention that a Book of Discipline containing trust language was applicable, we impliedly rejected the A.M.E. Church's reliance on church doctrine to the exclusion of the evidence derived from an inspection of the relevant documents along with the applicable Book of Discipline. *Id.* at 323-26, 703 A.2d at 206-07. What we said with respect to the office of the local church charter is consistent with such a rejection and, therefore, instructive on the issue this case presents:

> "The charter is, on the one hand, a relevant document which must be considered when there is a question raised as to the adequacy of the proof that the parent church has acted, consistent with its form of church government, to maintain ownership or control over local church property and, therefore, the local congregation's consent to the parent church's hegemony in that regard must be shown. Where, on the other hand, there is no evidence of the parent church having so acted, its constitution and other authoritative documents being silent on the critical issue, the deed to the property lacking any indication of its interest, and there being no legislation to bridge the gap, the relevance of the charter is at best marginal. In that circumstance, where the only evidence is essentially the form of church government, which as we have seen is hardly dispositive, without more, nothing less than the clearest statement of intention that the parent church own and control property

> deeded to the local church, which also paid for it, will suffice. The office of the charter, in short, ordinarily, is to provide evidence of the local church's consent to be bound by the parent church's polity."

348 Md. at 326 n. 14, 703 A.2d at 207 n. 14.

As in *Mt. Olive*, the issue is the ownership of the church property acquired by From the Heart during its affiliation with A.M. E.[sic] Zion. More specifically, it is whether, because the case was decided on summary judgment, there is in the record evidence, of which there is no genuine dispute, *see* Maryland Rule 2-501(a), that the church property was impressed with a trust, express or implied, in favor of A.M.E. Zion, as and when From the Heart acquired it. This issue must be resolved without determining ecclesiastical questions, *Mt. Olive*, 348 Md. at 310, 703 A.2d at 199, (citing *Watson v. Jones*, 80 U.S. (13 Wall.) at 729, 20 L.Ed. at 676-77), and by applying "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church,* 393 U.S. at 449, 89 S.Ct. at 606, 21 L.Ed.2d at 665. Stated simply, the neutral principles of law approach "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, 785 (1979)

Jones v. Wolf, supra, concerned a property dispute between the local church and the denomination with which it was affiliated. Having examined the property deeds, state statutes, local church charter, the denomination's constitution and Book of Church Order for language of trust in favor of the denomination, and finding none, the Georgia courts held that legal title to the local church property was vested in the local

church congregation, concluding that the mere connectional relationship between the local church and the denomination was an insufficient basis upon which to establish property rights in the denomination. The United States Supreme Court approved this "neutral principles of law" approach as an acceptable method of resolving that church property dispute. It cautioned, however, that although the analysis may involve examination of some religious instruments, such as a church constitution, the inquiry must be performed in purely secular terms without relying "on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Id.* at 604, 99 S.Ct. at 3026, 61 L.Ed.2d at 785.

Thus, neutral principles of law are principles that are "applicable not only to religious bodies, but to public and private lay organizations and to civil governments as well." *Kennedy v. Gray*, 248 Kan. 486, 807 P.2d 670, 676 (1991). *See West v. Belin*, 314 Ark. 40, 858 S.W.2d 97, 101 (1993) (stating "where the controversy involves issues of ownership in church property, the state has an obvious and legitimate interest in providing a forum in which these disputes can be peacefully resolved, so long as the resolution by the court does not involve consideration of any doctrinal matters. . . ."); *Moses v. Diocese of Colorado*, 863 P.2d 310, 320 (Colo. 1993)(quoting *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 98)(Colo.1986)(religious corporations are "'subject to the *principles of the common law* and the practice and procedure applicable to corporations under the general incorporation laws, so far as the same are pertinent.'"); *Holmstrom v. Sir*, 590 N.W.2d 538, 540 (Iowa 1999) (holding that any approach for settling church disputes must involve *no* consideration of doctrine); *Shirley v. Christian Episcopal Methodist Church,* 748 So.2d 672, 675 (Miss.1999) (neutral principles of law envision use of objective concepts of trust and property law in determining property disputes, applied

after a secular examination of deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons, *Books of Discipline* and the like to determine whether any basis for a trust in favor of the general church exists); *Atkins v. Walker*, 284 N.C. 306, 200 S.E.2d 641, 650 (1973) (noting that "these questions must be resolved on the basis of principles of law equally applicable to the use of properties of an unincorporated athletic or social club"); *Park Slope Jewish Ctr. v. Congregation B'Nai Jacob*, 90 N.Y.2d 517, 664 N.Y.S.2d 236, 686 N.E.2d 1330, 1332 (1997)(quoting *First Presbyt. Church v. United Presbyt. Church*, 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E.2d 454, 460-61, *cert denied* 469 U.S. 1037, 105 S.Ct. 514, 83 L.Ed.2d 404 (1984)) (applying neutral principles, courts focus on the language of instruments such as deeds and on such factors as "the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property," as long as the courts take "special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties have intended [a particular result]"); *Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, 1320-21 (1985) ("All disputes among members of a congregation, however, are not doctrinal disputes. Some are simply disputes as to the meaning of agreements on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine."); *Serbian Orthodox Church v. Kelemen*, 21 Ohio St.2d 154, 256 N.E.2d 212, 215 (1970). [sic]("We look to the ordinary indicia of property rights").

A trust exists where the legal title to property is held by one or more persons, under an equitable obligation to convey, apply, or deal with such property for the benefit of other persons. *Milholland v. Whalen*, 89 Md. 212, 213-14, 43 A.

43, 43-44 (1899). It is charitable when there "is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose." Restatement (Second) of Trusts § 348 at 210 (1959). The creation of a trust depends upon the intention of the settlor. *See Mory v. Michael*, 18 Md. 227, 240-41 (1862). In fact, it is that purpose and intention, rather than the use of any particular term, that determines whether a valid trust has been established. Thus, a trust will not be created where none in fact was contemplated. *See Doty v. Ghinger*, 166 Md. 426, 429, 171 A. 40, 42 (1934).

Trusts arise by either clear and deliberate language or operation of law. They may be express or implied,[22] a subset of which includes resulting or constructive trusts.[23] *See Springer v. Springer*, 144 Md. 465, 475-76, 125 A. 162,

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[22] An implied trust results from the legal implication of the facts and circumstances presumed to evidence the intent of the parties. When an express trust fails, an implied trust usually arises. *Taylor v. Mercantile-Safe Deposit & Trust Co.*, 269 Md. 531, 539, 307 A.2d 670, 674-75 (1973). See *Rector v. Episcopal Church*, 224 Conn. 797, 620 A.2d 1280, 1283 (1993). In that case, the Supreme Court of Connecticut applied the implied trust doctrine to uphold the trial court's finding of a trust in favor of the national denomination. It reasoned:

> "[I]in resolving ownership disputes over church property, a civil court must first determine whether an express trust exists, and if it does, the court must enforce its terms. If no express trust is found, the court must determine whether an implicit trust exists in favor of the general church. In conducting this inquiry, the court must examine the polity of the church, in addition to the church constitution and its canons, for language of trust in favor of the general church."

[23] An essential element of constructive trusts is fraud. *Eisinger Mill & Lumber Co. v. Dillon*, 159 Md. 185, 191, 150 A. 267, 270 (1930). No such allegation has been made in the case sub judice and, so, this category of trusts is not applicable and will not further be considered.

166-67 (1924). Express trusts are created by the direct and willful acts of the parties, by some writing, or deed, or words expressly evidencing the intention to create a trust. *See Levin v. Security Financial Ins. Corp.*, 246 Md. 712, 721, 230 A.2d 93, 98 (1967)(citing *Sieling v. Sieling,* 151 Md. 536, 135 A. 376(1926)); *Sieling v. Sieling,* 151 Md. 536, 548-50, 135 A. 376, 381 (1926). A charitable trust is considered an express trust. Restatement (Second) of Trusts § 349 at 213 (1959); *see Brown v. Concerned Citizens for Sickle Cell Anemia, Inc.*, 56 Ohio St.2d 85, 90, 382 N.E.2d 1155, 1158 (1978); *compare Rosser v. Prem*, 52 Md.App. 367, 377-78, 449 A.2d 461, 467 (1982)(enumerating the elements of a charitable trust: fiduciary relationship; duties of trustees; trust property; manifestation of intention; charitable purpose) *with Waesche v. Rizzuto*, 224 Md. 573, 583, 168 A.2d 871, 875 (1961) (creation of an express trust). The purpose of advancing religion is a charitable purpose. Restatement (Second) of Trusts § 371 at 253 (1959), see *Rosser v. Prem*, 52 Md.App. 367, 374, 449 A.2d 461, 465 (1982).

In Maryland, the burden of proof, to be carried by clear and convincing evidence, as to the existence of an express trust is on the party seeking to establish the trust. *See Kelley v. Kelley*, 178 Md. 389, 399, 13 A.2d 529, 533 (1940) (an express, resulting or constructive trust must be proven by clear and convincing evidence). *See Masters v. Masters*, 200 Md. 318, 332, 89 A.2d 576, 582 (1952). This Court has recognized that, because it may be one of the consequences of affiliation with a denomination or parent church, matters to be determined by the trustees and the local congregation, the control of the local property may be modified, ordinarily by contract, express or implied, or otherwise. *Mt. Olive*, 348 Md. at 316, 703 A.2d at 202; *Eldership I*, 249 Md. at 672, 241 A.2d at 704; *Eldership II*, 254 Md. at 176, 254 A.2d at 170.

Under Maryland law, the property of a charitable or religious nonprofit corporation is held in trust. *See Inasmuch Gospel Mission, Inc. v. Mercantile Trust Co.*, 184 Md. 231, 239, 40 A.2d 506, 510 (1945). Indeed, the property of a local church is held in trust by the religious nonprofit corporation for the benefit of the local church congregation, *Mt. Olive*, 348 Md. at 314, 703 A.2d at 201, and cases therein cited at n. 10, unless the control of that property is modified by contract, express or implied. *Id* at 316-17, 703 A.2d at 202-03. *See Watson v. Jones*, 80 U.S. at 720, 20 L.Ed. at 673 (holding that "trustees obviously hold possession for the use of the persons who by the constitution, usages and laws of the [church], are entitled to that use"). This is the effect of incorporation under the General Religious Corporation Law, as we made clear in *Eldership I*, in which we concluded:

> "It is clear that when a congregation is incorporated under the General Religious Law applicable to all religious groups, the trustees and the local congregation own and control the property of the local church. . . . There is no provision in the General Religious Law that the local congregation conform to or follow any particular religious tenet or doctrine and it is apparent that it would be inappropriate for the General Assembly to have made such a provision. In short, the General Religious Law is concerned with the ownership, use and disposition of property, not with any religious theories, doctrines or tenets. . . . So far as the Maryland statutory law is concerned, there seems little doubt that the trustees and congregations of the local churches are entitled to own, use and control the property of the respective corporations."

249 Md. at 658, 241 A.2d at 696 (footnotes omitted).

Once established, a trust may be modified without the beneficiaries' consent, but only if the power to do so is reserved. *Milholland*, 89 Md. at 215, 43 A. at 44. If no such

right has been reserved, then the beneficiaries' consent is required before the trust may be modified. *See Allen v. Safe Deposit & Trust Co.*, 177 Md. 26, 29, 7 A.2d 180, 181 (1939). A trust may be designated as either revocable or irrevocable, *See Hoffa v. Hough*, 181 Md. 472, 475, 30 A.2d 761, 762 (1943); in the absence of a designation, the trust is revocable by any act sufficient to manifest the settlor's intention to revoke the trust. *Id.*

We now turn to apply the foregoing principles to the case *sub judice.* As we have seen, A.M.E. Zion is hierarchal in its internal government structure. It also provides in its governing documents, the *Book of Discipline* in effect at all times relevant to the case *sub judice,* a trust clause that requires places held, or thereafter acquired by a local church, for the purpose of worship or parsonage, to be held in trust for the denomination. The *Book of Discipline* further provides that this requirement applies whether, or not, the deed or other written instrument by which the premises are held contains the trust clause prescribed in the *Book of Discipline,* so long as "any or all" of certain enumerated occurrences are shown. Insofar as the property acquired by From the Heart is concerned, it is undisputed that these indications existed and have been shown: the property was conveyed to the trustees for From the Heart, From the Heart, as Full Gospel, used the name, customs, and polity of A.M.E. Zion and was known in the community as a member of the congregation of the denomination and From the Heart, as Full Gospel, accepted the pastor appointed by a Bishop of A.M.E. Zion.

It is also undisputed that the property acquired by From the Heart while a member of A.M.E. Zion was titled in its name, as a Maryland Religious Corporation, with no mention of A.M.E. Zion. None of the deeds to the property contained language indicating that the property was being held in trust for A.M.E. Zion. Moreover, From the Heart's Articles of Incorporation do not mention A.M.E. Zion and, in fact, vests

its trustees with broad power to act, consistent with the General Corporation law. To be sure, the initial charter, by stating as part of its purpose, "to engage in any other lawful activity in accordance with the Discipline of the African Methodist Episcopal Zion Church," acknowledged From the Heart's affiliation with A.M.E. Zion. As it was permitted by § 5-308 to do, however, From the Heart amended its charter to delete that reference and to expand its corporate powers, both consistent with the General Corporation law provisions. In addition, the church by-laws do not mention or contain any reference to A.M.E. Zion.

Under *Mt. Olive*, consistent with the *Eldership* cases, a court faced with a church property dispute must review all relevant documents and circumstances, to include the denomination's polity, its constitution and other authoritative sources, the Religious Corporations law, the relations between the parties, the local church's charter and other pertinent documents to determine the proper resolution. 348 Md. at 320, 703 A.2d at 204. Indeed, we made clear, unless the deed to the property contains a trust provision in favor of the denomination, review solely of the doctrine and polity of the denomination simply is not sufficient. *Id.*

In entering summary judgment in favor of A.M.E. Zion, the trial court noted the existence of the factors enumerated in the Book of Discipline as indicating the acceptance of the denomination's polity and its requirement as to the holding of church property in trust and entered the judgment on the denomination's behalf on that basis. Because those factors apply only when there is no provision in the local church's deeds directing that the property is being held in trust for A.M.E. Zion and the record does not reflect consideration of any other documents or circumstances, it appears that the court failed to comply with *Mt. Olive*. For that reason alone, summary judgment should not have been granted.

Mt. Olive, as indicated, requires that *all* relevant documents and circumstances must be reviewed. To be sure, the trial court considered that From the Heart, as Full Gospel, complied with the enumerated actions in the Discipline that purport to indicate From the Heart's agreement, as Full Gospel, to the establishment of a trust even though it did not include in the deeds to the property it acquired the trust language specified in the Discipline. The trial court, however, did not consider the contrary evidence, i.e., From the Heart's intentional deeding of the property in its name only, not in trust, the national denomination's acknowledgment of, and acquiescence in, this deeding irregularity, From the Heart's amendment of its charter to remove any reference to the A.M.E. Zion church and to vest its trustees with even greater authority to control the property of the church, evidence that may be construed to suggest that From the Heart did not, in fact, consent to the trust provisions. In effect, therefore, the trial court considered only the church polity, from which it determined that From the Heart consented to abide by the A.M.E. Zion Discipline. By so doing, and, thus, failing to consider all of the relevant documents and circumstances, the trial court simply and inappropriately has deferred to the church doctrine; it has relied on religious precepts to enforce From the Heart's "Connectional responsibilities."

The Supreme Court, *see Presbyterian Church*, 393 U.S. at 449, 89 S.Ct. at 606, 21 L.Ed.2d at 665, *Watson*, 80 U.S. at 727, 20 L.Ed. at 676, as has this Court, *Mt. Olive*, 348 Md. at 309-312, 703 A.2d at 199-200, and those of our sister States that have addressed the issue, e.g., *West v. Belin*, 858 S.W.2d at 101; *Holmstrom v. Sir*, 590 N.W.2d at 540, have made clear that not only are civil courts prohibited from deciding religious disputes, but that they must refrain from resolving property disputes on a doctrinal basis. In fact, as we have seen, this Court has instructed that where there is no clear

provision in the deed to local church property calling for the holding of the property in trust for the parent church, "it is not enough to consider simply the form of the church government, the constitution or other authoritative sources pertinent to the parent church's claim to the property, consideration must also be given to the Religious Corporations Law, the relations between the parties and the local church charter." *Mt. Olive,* 348 Md. at 320, 703 A.2d at 204. This is consistent with what the Supreme Court said in *Jones v. Wolf*, supra,

> "In undertaking an examination of religious documents, such as a church constitution, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust."

443 U.S. at 604, 99 S.Ct. at 3026, 61 L.Ed.2d at 785. *See also Swanson v. Roman Catholic Bishop*, 692 A.2d 441, 445 n. 7 (Me.1997) (When applying neutral principles of law to resolve church-related disputes, courts may examine church documents when they can be scrutinized in "purely secular terms" and the court is not required to rely on religious precepts in determining the question before it). Moreover, allowing consent to be found from examination of the church Discipline alone, with no consideration of the other documents and circumstances is not simply to disregard *Mt. Olive*, but it comes quite close to, if it does not do so, violating the First Amendment's prohibition against resolving "rights to the use and control of church property on the basis of a judicial determination that one group of claimants has adhered faithfully to the fundamental faiths, doctrines and practices of the church prior to the schism, while the other group of claimants has departed substantially therefrom. Pressed to its logical conclusion, such a judicial inquiry

becomes a heresy trial. Such trials may not properly be conducted by any civil court, state or Federal." *Atkins v. Walker*, 200 S.E.2d at 649.

Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church, is relevant on this issue. In that case, by corporate charter amendment, an affiliated church of the United Presbyterian Church of the United States of America (UPCUSA) voted to disaffiliate. It defended an action by UPCUSA for ownership of the church property by contending that they never agreed to surrender title to the national denomination. Reversing the judgment of the Commonwealth Court, which rejected the defense, the Supreme Court of Pennsylvania explained:

> "The Commonwealth Court chose to accept that the question was one of deference and yielded the issue to the judicature of UPCUSA. We believe, under the circumstances, they went further than required. Indeed they seemed to have mandated deference simply because there existed a judicature in the national church body. They would have been correct if the issue was doctrinal, it however is, whether there ever existed an agreement at all: an issue that requires no doctrinal exegesis."

489 A.2d at 1322.

The argument that the A.M.E. Zion makes, that where the Church Discipline contains trust language and provides for the situation in which the local church fails to deed the local church property in trust to the national denomination, the court need resort only to the church Discipline to resolve the property dispute was also made in *Mt. Olive*, and rejected. Only when there is clear trust/reverter language in the deed to the property (Eldership option I), or a statute enacted by the Legislature (Eldership option III), is there no need to consider other documentation. When, however, Eldership option II is at issue, it is necessary to consider other documentation or

circumstances to determine whether the local church has consented to the provision in the Discipline providing for the reversion of that property. Indeed, we have indicated that "[t]he office of the charter . . . ordinarily, is to provide evidence of the local church's consent to be bound by the parent church's polity." *Mt. Olive*, 348 Md. at 326 n. 14, 703 A.2d at 207 n. 14.

In any event, in Maryland, unless otherwise specifically provided, a trust is revocable. *See Hoffa v. Hough*, 181 Md. 472, 30 A.2d 761 (1943) (holding that a settlor creating a trust may designate it to be either revocable or irrevocable, and if no designation is made, the trust is then revocable, by any act sufficient to manifest the settlor's intention to revoke the trust). Thus, as circumstances and situations change, a trust may be revoked. Paragraphs 494 and 495. 1 of the Book of Discipline provide for a trust in favor of A.M.E. Zion as to premises "held or hereafter acquired" for use and occupancy of a place of worship or a parsonage for the use of its ministers. These provisions apply, clearly, to the situation when the local church is affiliated with the denomination. Neither indicates that the trust thus created is irrevocable nor that it addresses the situation in which, as occurred here, the local church terminates the affiliation. There is no express provision dealing with the disposition of church property when a local church dis-affiliates from the denomination and certainly there is not an express provision mandating that such church relinquish its property upon that occurrence. Consent to holding property in trust during the course of affiliation does not automatically constitute consent to relinquishing that property once the affiliation terminates. This is particularly the case where the trust is revocable and is, therefore, another reason that there must be a more expanded review of documents and circumstances, as required by Mt. Olive, rather than merely the review of the church Discipline.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE RESPONDENT.

APPENDIX B

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

Case No. CAE99-19229

FROM THE HEART CHURCH MINISTRIES, INC.,
Plaintiff/Counter Defendant,

and

REV. JOHN A. CHERRY,
Counter Defendant,

v.

AFRICAN METHODIST EPISCOPAL ZION CHURCH
MID-ATLANTIC II EPISCOPAL DISTRICT,
Defendant,

and

AFRICAN METHODIST EPISCOPAL ZION CHURCH,
Defendant/Counter-Plaintiff,

and

BISHOP MILTON A. WILLIAMS, SR.,
Defendant.

and

Case No. CAE99-25278

PHILADELPHIA-BALTIMORE
ANNUAL CONFERENCE,

and

FULL GOSPEL A.M.E. ZION CHURCH (A/K/A FULL GOSPEL A.M.E. ZION CHURCH, INC.),

Plaintiffs,

v.

FROM THE HEART CHURCH MINISTRIES INC.,

and

JOHN A. CHERRY,

Defendants.

FINAL PARTIAL SUMMARY JUDGMENT

Having heard argument on March 23, 2000, on the property issues in this litigation; and having considered in particular the motion filed by the Defendant/Counter-Plaintiff African Methodist Episcopal Church ("AME Zion Church") to dismiss Counts I and II of the First Amended Complaint in CAE 99-19229; and having considered the memorandum and other materials presented by the parties in support and opposition to that motion; and having determined that AME Zion Church's motion to dismiss should be treated as a motion for summary judgment pursuant to Maryland Rule 2-322(c); and having determined that there is no genuine dispute that From the Heart Church Ministries, Inc., during its affiliation with the AME Zion Church, accepted the pastors appointed by the bishops of the AME Zion Church and used the name, customs and polity of the AME Zion Church in such a way as to be known in the community as part of the AME Zion denomination, and that THE BOOK OF DISCIPLINE OF THE AFRICAN METHODIST

EPISCOPAL ZION CHURCH, at all material times, included provisions requiring all local church property to be held in trust for the AME Zion Church; and based on the undisputed facts and reasons stated in the oral opinion rendered at the hearing on March 23, 2000; and in acknowledgment of From the Heart Ministries, Inc., and Pastor Cherry's timely exception to this summary judgment ruling; and in acknowledgment of From the Heart Ministries request for reconsideration which was denied; and in acknowledgment of From the Heart Church Ministries, Inc., request for a stay pending appeal which was also denied; and having considered the submissions and arguments made in support of and in opposition to the motion of Defendant Bishop Milton A. Williams, Sr., and the African Methodist Episcopal Zion Church Mid-Atlantic II Episcopal District ("Mid-Atlantic") to be dismissed as parties in Case No. CAE 99-19229, and the Motions filed by Full Gospel AME Zion Church, Inc., and the Philadelphia-Baltimore Annual Conference to intervene as parties in Case No. CAE 99-19229 and to consolidate that case with No. CAE 99-25278 it is on this 3 day of April, 2000,

1. ORDERED that all claims asserted against Defendant Bishop Milton A. Williams, Sr., and Mid-Atlantic in Case No. CAE 99-19229 be and hereby are dismissed, with prejudice; and it is further

2. ORDERED that the motions of Full Gospel AME Zion Church, Inc., and the Philadelphia-Baltimore Annual Conference to intervene in Case No. CAE 99-19229 and to consolidate these actions be and hereby are granted; and it is further

3. ORDERED that summary judgment is granted in favor of African Methodist Episcopal Zion Church Inc., and the African Methodist Episcopal Zion Church Mid-Atlantic II Episcopal District, and Bishop Williams on Counts I and

II of the First Amended Complaint filed in Case No. CAE 99-19229; and it is further

4. ORDERED that summary judgment is granted in favor of the African Methodist Episcopal Zion Church on counts I, II and III of the Answer and Counterclaims of the African Methodist Episcopal Zion Church in CAE 99-19229; and it is further

5. ORDERED, that Summary Judgment is granted in favor of the Philadelphia-Baltimore Annual Conference and Full Gospel AME Zion Church, Inc. on counts I and II of the Complaint in CAE 99-25278; and it is further

6. ORDERED, that summary judgment be and hereby is entered declaring that, under the neutral principles of property law, all property acquired by From the Heart Church Ministries, Inc., including all property acquired under the name Full Gospel AME Zion Church, prior to July 8, 1999, is subject to a trust in the favor of the AME Zion Church, as expressed in THE BOOK OF DISCIPLINE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, which trust has the legal effect of requiring the property to stay within the AME Zion denomination and preventing From the Heart Church Ministries, Inc. from retaining the property upon its decision to end its affiliation with the AME Zion Church; and it is further

7. ORDERED and DIRECTED, pursuant to Maryland Rule 2-602(b)(1), that a FINAL JUDGMENT be ENTERED in accordance with the Orders rendered in ¶¶ 3-6, above, the Court having determined that there is no just reason for delay.

/s/ E. Allan Shepherd
E. ALLEN SHEPHERD, Judge

APPENDIX C

UNITED STATES CONSTITUTION
FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX D

THE DOCTRINES

AND

DISCIPLINE

OF THE

AFRICAN METHODIST EPISCOPAL ZION CHURCH

WITH AN APPENDIX

REVISED BY THE GENERAL CONFERENCE

TEMPLE HILLS, MARYLAND

AND

WASHINGTON, D. C.

JULY 24 - AUGUST 2, 1996

PRINTED BY

A.M.E. ZION PUBLISHING HOUSE

Charlotte, North Carolina

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PART II

THE CHURCH

* * * *

CHAPTER V.

MEMBERSHIP

I. Probationers

* * * *

¶ 90. A person professing faith in Christ who has previously joined on Probation may not be required to wait six months before he is received into Full Membership; but may be admitted to Full Membership as soon as he satisfies the Pastor and Leader as to the soundness of his conversion and on examination by the Pastor before the Church as required in ¶ 656 has given satisfactory assurance both of the correctness of his faith, and of his willingness to observe and keep the rules of our Church.

1. Let every Pastor and Class Leader see that all persons on probation be instructed in the Rules and Doctrines of the African Methodist Episcopal Zion Church before they are admitted to Full Membership.

2. The Pastor shall see that there is a book called the Probation Book, in which the names of all the Probationers shall be recorded, and which shall be examined monthly or quarterly at the Leaders' Meeting in order to inquire into the state of the Probationers, to approve, or drop them as the case may be.

3. Probationers are expected to conform to the rules and usages of the Church, and to show evidence of their desire for fellowship in the Church; they are entitled to all its spiritual privileges and benefits; but they may not enjoy the right to

vote nor be Members of the Quarterly Conference; they may, however, testify as witnesses.

II. Admission Into Full Connection

¶ 91. Persons may be admitted to Full Membership into our Church in two ways:

1. A Probationer may be admitted to Full Membership, provided he has served out his Probation, has been baptized, recommended at the Leaders' Meeting, and, if none has been held according to law, recommended by the Leader, and, on examination by the Pastor before the Church as required in ¶ 656 has given satisfactory assurance both of the correctness of his faith, and of his willingness to observe and keep the rules of our Church.

2. A member in good standing in any other Evangelical Church, desiring to unite with us, may be received on his Certificate of Membership, and by giving satisfactory answers to the unusual questions laid down in our formula for the Reception of Members.

3. Let the Pastor see that a proper Church record is kept in each Church, and that the Church Clerk, or where there is not a Clerk, the Secretary of the Leaders' Meeting properly and faithfully enroll the names of all the Member received into our Church.

4. The Presiding Elder shall examine the Roll of Membership at each session of the Quarterly Conference, and see that the number and names of all the Members therein recorded be reported by the Pastor at the Annual Conference.

* * * *

VII. Receiving Societies Into Our Connection

¶ 99.1 A Society wishing to unite with us shall present to one of our Preachers a list of their names accompanied with

their desire to become organized under our Discipline. The Preacher shall then read to them the General Rules of our Church, and if they are willing to comply with the same he shall read the list of names, and declare them Members in full standing in the African Methodist Episcopal Zion Church.

* * * *

PART III

THE CONFERENCES

* * * *

CHAPTER I

THE GENERAL CONFERENCE

* * * *

¶ 121. The General Conference shall have power to revise and amend the rules whenever necessary for the general interest of the Connection; and all such rules shall become valid immediately after the sanction of that body. The General Conference is the supreme ruling or law-making body of the A.M.E. Zion Church while in session. Only the General Conference can change legislation once adopted by it in regular or special session.

1. No committee, commission, council, conference or board, including the Board of Bishops shall have the authority or right to exclude any amendments adopted by the General Conference from the Discipline of the A.M.E. Zion Church.

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PART IV

THE MINISTRY

* * * *

CHAPTER II

RECEPTION OF PREACHERS AND MINISTERS

* * * *

II. Admission Into Full Connection.

¶ 212. A Preacher on Trial who has been employed in the regular itinerant works on Circuits or Stations, or as an instructor in an institution of learning, for two successive years from the time he was received on Trial, may be admitted into Full Connection in the Annual Conference after he has given satisfactory evidence of his knowledge of the first two years of the Conference Course of Study, and after the examination before the Conference prescribed in ¶ 206.

¶ 213. In admitting a Preacher into Full Connection, after solemn fasting and prayer, he shall be asked, before the Conference, the following questions, with any others which may be thought necessary, namely:

1. Have you saving faith in Christ?
2. Are you going on to perfection?
3. Do you expect to be made perfect in love in this life?
4. Are you groaning after it?
5. Are you resolved to devote yourself to God and His work?
6. Do you know the General Rules of our Church?
7. Will you keep them?
8. Do you constantly attend the Lord's Supper?

9. Have you studied the doctrines of the African Methodist Episcopal Zion church?
10. Will you preach and maintain them?
11. Have you studied our form of Church Discipline and Polity?
12. Will you support and maintain them?
13. Have you considered the Rules for Preachers, especially those relating to Diligence, Punctuality and to Doing the Work to which you are assigned?
14. Will you keep them for conscience's sake?
15. Are you determined to employ your time in the work of God?
16. Will you diligently instruct the children in every place?
17. Will you visit from house to house?
18. Will you recommend fasting and abstinence both by precept and example?
19. Are you embarrassed by debts, so as to prevent you from traveling?
20. Do you use intoxicating drugs or tobacco?

¶ 214. If he gives satisfactory answers to questions contained in ¶ 213, after he has been employed two successive years in the regular itinerant work, he may by vote be received into Full Connection.

* * * *

PART VII

TEMPORAL ECONOMY

* * * *

CHAPTER IX

CHURCH PROPERTY

I. Trustees—Their Election and Duties

¶ 484. Each Board of Trustees of our Church property shall consist of not less than three nor more than 15 persons, one of whom shall be the Pastor. Persons elected to the Board must be at least Twenty-one (21) years of age, members in good standing of the African Methodist Episcopal Zion Church who have given evidence of their ability, desire and practice of witnessing to the Gospel of the Kingdom of God in and beyond their environs; whose obligation is to uphold the laws and practices of the A.M.E. Zion Church as expressed in the Book of Discipline.

¶ 485. In all cases where the law of the State or Territory requires a specific mode of election, that mode shall be observed.

¶ 486. In all other cases, the Trustees, except the Pastor shall be elected annually by the Members of the Church upon the nomination of the Pastor In Charge, who shall nominate one Candidate for each vacancy. In case of failure to elect at the proper time a subsequent meeting may elect, and all the Trustees shall hold their office until their successors are elected.

¶487. At this first regular meeting, after the election the Trustees shall organize their Board by the election of a Chairman, Secretary, and Treasurer. The Chairman shall call and preside over the meeting of the Board, and shall sign all orders for the paying out of money by the Treasurer from the

treasury. The Secretary shall keep a faithful record of all the meetings and transactions of the Board, draw up and countersign all orders on the Treasurer for the paying out of money, and make a report for the Board of all their receipts and expenditures to each Quarterly Conference. The Treasurer shall receive and pay out all the money belonging to the Board by the order of the Chairman; he shall be subject to the direction of the Board of Trustees from time to time, also his accounts shall be subject to the inspection of the Pastor In Charge. All official Church checks must be signed by not less than two officers of the Board.

¶ 488. The Board of Trustees for every church shall be responsible to the Quarterly Conference of the Charge, and shall be required to present a full report of its acts at every Quarterly Conference. The Conference shall have the power to confirm their election, and to remove any of them from causes, when not in conflict with the law of the State or Territory.

¶ 489. No Trustees shall be rejected while his is in joint security for money unless such relief be given him as is demanded or the creditors will accept.

¶ 490. In Case of a vacancy on the Board of Trustees by death, resignation or otherwise, the Pastor shall call the membership together and proceed to fill the vacancy in accordance with the foregoing provision.

¶ 491. l. It is the duty of the Board of trustees to provide a place of worship and take charge of and protect the Church Property with all of its appurtenances in trust for the membership, and to make such improvements as may be necessary from time to time for the interest of the Society of which they are Trustees; and to see that order and decorum are at all times observed in the Church, and where there is not a Board of Stewards, to perform the duties therein stated.

2. The Trustee Board of each church shall be required to submit Annual reports as to the amount of insurance coverage on their church properties and the amount of premium paid. Insurance representing an amount not less than replacement value of all real and personal property of each church shall be paid on or before the expiration date of each policy.

¶ 492. The Pastor In Charge is ex-officio President of the Board of Trustees.

II. Trust Clause in Conveyance of Church Property

¶ 493. It is the duty of the Pastor and Presiding Elder to see that our Church Property is deeded according to our Book of Discipline, and duly incorporated in accordance with the laws of the State or Territory in which it is situated.

¶ 494. All written instruments of conveyance by which premises are held or hereafter acquired, for use as a place of Divine worship for members of the African Methodist Episcopal Zion Church or for other church activities, shall contain the following trust clause:

"In trust that said premises shall be used, kept maintained, and disposed of as a place of Divine Worship for the use of the Ministry, and Membership of the African Methodist Episcopal Zion Church in America, subject to the provisions of the Discipline, Usage, and Ministerial appointments of said Church, as from time to time authorized and declared by the General Conference of said Church, and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserved no right or interest in said premises."

III. Trust Clause in Conveyance of Parsonage Property

¶ 495.1. All written instruments by which premises are held or hereafter acquired as a parsonage for the use and occupancy of the ministers of the African Methodist Episcopal Zion Church shall contain the following trust clause:

"In trust that said premises shall be held, kept and maintained as a place of residence for the use and occupancy of the Ministry of the African Methodist Episcopal Zion Church in America, who may from time to time be stationed in such place, subject to the provisions of the Discipline and usage of said Church, as from time to time authorized and declared by the General Conference of said Church, and by the Annual Conference within whose bounds said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises".

2. However, the absence of the trust clause stipulated in ¶ 494 and ¶ 495 in deeds and conveyances previously executed, shall in no way exclude a local church from, or relieve it of, its African Methodist Episcopal Zion Church Connectional responsibilities nor shall it absolve a local congregation or board of trustees of its responsibility to the African Methodist Episcopal Zion Church, provided that the intent and desire of the founders and/or the later congregations and board of Trustees is shown by any or all of the following indications: (a) the conveyance of the property to the trustees of the local African Methodist Episcopal Zion Church or any of its predecessors; (b) the use of the name, customs, and policy of the African Methodist Episcopal Zion church in such a way as to be thus known to the community as a part of this denomination: (c) the acceptance of the pastorate of ministers appointed by a bishop of the African Methodist Episcopal Zion Church, or employed by the presiding elder of the district in which it is located.

3. Real property acquired by a conveyance containing either or both of the foregoing trust clauses may be sold in conformity with the provisions of the Discipline of the African Methodist Episcopal Zion Church. When its use as a church or parsonage, as the case may be, has been or is intended to be terminated; and when such real estate is sold or mortgaged in accordance with the provisions of the Discipline

of the African Methodist Episcopal Zion Church, the written acknowledged consent of the proper presiding bishop representing the African Methodist Episcopal Zion Church to the action taken shall constitute a release and discharge of the real property so sold and conveyed from either or both of the foregoing trust clauses; or in the event of the execution of a mortgage, such consent of the presiding bishop shall constitute a formal recognition of the priority of such mortgage lien and the subornation of the foregoing trust provisions thereof; and no bona fide purchaser or mortgagee relying upon the foregoing record shall be charged with any responsibility with respect to the disposition by such local church of the proceeds of any such sale or mortgage.

¶ 496. In all other cases of said conveyances, let careful conformity be had to the laws, usage and forms of the several State and Territories in which the property may be situated so as to secure the ownership of the premises in fee simple.

IV. Sale, Transfer and Mortgage of Church Property

¶ 497. If the Trustees, or any of them, have advanced or shall advance any sum or sums of money on account of said premises, and they, the said Trustees, or their successors be obliged to pay the said sum or sums of money, they, or a majority of them, shall be authorized to raise the said sum or sums of money by a mortgage on the said premises; or by selling the said premises after giving notice to the Pastor or Minister who has the oversight of the Congregation attending Divine services on the said premises—if the money due be not paid to said Trustees or their successors within one year and six months after such notice is given. If such sale takes place the said Trustees or their successors, after paying the debt, and other expenses which are due from the money arising from such sale, shall deposit the remainder of the money accruing from said sale in the hands of the Steward or Stewards of the Society belonging to or attending Divine

Service on the said premises, which surplus of money from such sale deposited in the hands of the said Steward or Stewards, shall be at the disposal of the Quarterly Conference according to its best judgment for the use of the said Society.

¶ 498.l. The Trustees shall not in any case whatsoever dispose of Church Property by sale or otherwise without the consent of the majority of the Members in Full Connection, expressed by vote in a meeting called for that purpose, of which due notice has been given. Provided, however, that no congregation, pastor, nor Trustee Board or agent of the congregation shall mortgage or sell any property of the A.M.E. Zion Church without confirmation of the Quarterly Conference and written consent of the Bishop of the District or the Annual Conference.

2. It is further provided that where there is a Church or circuit, or a Station, without a Pastor, because the membership has withdrawn and scattered and there is no Congregation, and no need for an appointment of a Preacher to this place, that the Conference in which the Church is located may pass a resolution declaring the Church or Circuit, or Station discontinued or abandoned and ordering the sale of the property, and approved by the Bishop; the Bishop of the District shall give a deed to the purchaser for the same, and the proceeds from the sale of said property turned over to the Annual Conference for its disposition.

3. Any gift, legacy, devise, annuity, or other benefit to a pastoral charge or local church that accrues or becomes available after said charge or church has been discontinued or abandoned, shall become the property of the trustees of the Annual Conference or Finance Board within whose jurisdiction the said discontinued or abandoned church was located.

INSURANCE

¶ 499.1. The 45th Session of the General Conference directs that all A.M.E. Zion Churches will be required to participate in the Property and Casualty Insurance Program.

2. Churches that rent any part of their properties to any other persons or organizations will require the renter to present a certificate of insurance. Said certificate of insurance must provide the church with a minimum of $50,000 fire damage waiver, $50,000 medical payment, and $300,000 liability limit or amount equal to the value of the rental property. These coverages should be secured through the Department of Brotherhood Pensions, billed directly to the tenant through rental fees, and paid to the Department by the church. The policy should also provide the tenant with content coverage equal to the value of their contents so as not to make the church responsible for contents belonging to the tenant if damaged in a fire.

Trustees's Quarterly Report

The Trustees Quarterly Report shall be made on the forms approved by the 44th Quadrennial Session of the General Conference of the A.M.E. Zion Church.

* * * *

PART VIII

THE RITUAL

* * * *

CHAPTER II

RECEPTION OF MEMBERS

* * * *

¶656. Form for Receiving Persons Into the Church after Probation.

DEARLY BELOVED BRETHREN: The Scriptures teach us that the Church is the household of God, the body of which Christ is the head; and that it is the design of the Gospel to bring together in one all who are in Christ. The fellowship of the Church is the communion which its Members enjoy one with another. The ends of this fellowship are the maintenance of sound doctrine and of the ordinances of Christian worship, the exercise of that power of godly admonition and discipline which Christ has committed to his Church for the promotion of holiness. It is the duty of all men to unite in fellowship, for it is only those that "be planted in the house of the Lord that shall flourish in the courts of our God." Its more particular duties are to promote peace and unity, to bear one another's burdens, to seek the intimacy of friendly society among themselves, to continue steadfast in the faith and worship of the Gospel, and to pray and sympathize with each other. Among its privileges are peculiar incitements to holiness from the hearing of God's word and sharing in Christ's ordinances, the being placed under the watchful care of Pastors, and the enjoyment of the blessings which are promised only to those who are of the household of faith. Into this holy fellowship the *persons* before you, who *have* already received the Sacrament of Baptism and *have* been under the care of proper Leaders on Trial, *come* seeking admission. We

now propose in the fear of God to question *them* as to their *faith* and purpose, that you may know that they are proper *persons* to be admitted into the Church.

Then, addressing the applicants for admission, The Minister shall say:

DEARLY BELOVED: You are come hither seeking the great privilege of union with the Church our Savior has purchased with his own blood. We rejoice in the grace of God vouch-safed unto you, in that he has called you to be his followers, and that thus far you have run well. You have heard how blessed are the privileges and how solemn are the duties of membership in Christ's Church; and before you are fully admitted thereto it is proper that you do here publicly renew your vows, confess your faith, and declared purpose by answering the following questions:

Question. Do you here, in the presence of God and this Congregation, make the solemn promise contained in the Baptismal Covenant, ratifying and confirming the same, and acknowledging yourselves bound faithfully to observe and keep the Covenant?

Answer. I do.

Question. Have you saving faith in the Lord Jesus Christ?

Answer. I have.

Question. Do you believe in the Doctrines of the Holy Scriptures as set forth in the Articles of Religion of the African Methodist Episcopal Zion Church?

Answer. I do.

Question. Will you cheerfully be governed by the Rules of the African Methodist Episcopal Zion Church, hold sacred the Ordinances of God, and endeavor, as much as in you lies, to promote the welfare of the Redeemer's kingdom?

Answer. I will.

Question. Will you cherish friendly feelings toward all persons, as far as possible, especially toward the Members of the Church?

Answer. I will.

Question. Will you contribute of your earthly substance, according to your ability, to the support of the Gospel and the various benevolent enterprises of the Church?

Answer. I will.

Then the Minister, addressing the Church, shall say:

Brethren, you have heard the response given to our inquiries. Have any of you reason to allege why these persons should not be received into Full Connection in the Church?

No objections being alleged, the Minister shall say to the Candidate:

We welcome you to the communion of the Church of God, and in testimony of our Christian affection and the cordiality with which we receive you, I hereby extend to you the right hand of fellowship; and may God grant that you may be faithful and useful members of the Church militant till you are called to the fellowship of the Church triumphant, which is "without fault before the throne of God."

Supreme Court, U.S.
FILED
DEC 26 2002
OFFICE OF THE CLERK

No. 02-789

IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Court lack jurisdiction to review an interlocutory decision of the Maryland Court of Appeals reversing partial summary judgment in a case now pending before the trial court?

2. Does the Court lack authority to review a decision of the Maryland Court of Appeals as to state law issues concerning (a) the requirements for creating and maintaining a trust under Maryland law, and (b) the evidentiary standards for rendering summary judgment under Maryland law?

3. Did the Maryland Court of Appeals correctly address constitutional requirements in applying neutral principles of Maryland law in a dispute as to the ownership of property between a religious denomination and a local church that withdrew from the denomination?

RULE 29.6
CORPORATE DISCLOSURE STATEMENT

Respondent From the Heart Church Ministries, Inc. has no parent corporation. No publicly traded corporation owns 10% or more of respondent.

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PRELIMINARY STATEMENT

This is a classic case where a partial summary judgment was reversed on appeal because the state trial court disregarded conflicting evidence as to material issues of fact in violation of the rules of procedure, and failed to apply the correct substantive law. The case has been remanded for trial. Petitioners seek review of the interlocutory ruling by the Maryland Court of Appeals reversing that summary judgment.

The Court of Appeals' decision creates no new law. Petitioners strain to concoct a conflict regarding the application of the neutral principles doctrine by the Court of Appeals and the precedents of this Court, but there is none. Under neutral principles of law applied by the Court of Appeals, this property dispute was correctly decided by applying the established property law of Maryland. *See Jones* v. *Wolf*, 443 U.S. 595, 603 (1979); *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970) (*per curiam*).

The parties to the dispute are a religious denomination and its affiliates (petitioners) and a local church and its pastor (respondents). However, the substantive issue concerns the ownership of specific property, not religious beliefs. Respondent, From the Heart Church Ministries, Inc. ("From the Heart"), is a local church in Prince George's County, Maryland. From the Heart acquired property while it was a member of petitioner, African Methodist Episcopal Zion Church ("AME Zion" or "denomination"). The property was acquired with From the Heart's own funds, in its own name, and was deeded to it without any trust. The statement in the petition that the property was "previously held in trust for AME Zion," (Pet. at 4-5), has no support in the record and is absolutely wrong. (*See* Pet. App. at 33a.)

From the Heart left the denomination in 1999. Petitioners then demanded all of From the Heart's property, claiming that it was held in trust under provisions of the denomination's Book of Discipline ("the Discipline"). (*See* Pet. App. at 54a-55a.) However, the evidence is that the property belonged to From the Heart in fee simple without any trust. From the Heart denied that it ever intended to create a trust. From the Heart's articles of incorporation and bylaws authorized it to own property in its own behalf. There is no provision in the Discipline or in the property deeds that required From the Heart's property to revert to petitioners on From the Heart's withdrawal, and no provision subjecting its personal property to a trust. Moreover, there is undisputed evidence that AME Zion openly waived the trust provisions of the Discipline eleven years before From the Heart withdrew.

The Circuit Court for Prince George's County awarded partial summary judgment to petitioners, ruling that all of From the Heart's property was held in trust for AME Zion. (*See* Pet. App. at 40a-43a.) That court made no distinction between real and personal property. Contrary to Maryland law governing summary judgment, the circuit court relied solely on the trust provisions of the Discipline and ignored all of the pleadings and evidence offered by respondents which tended to prove that no trust existed, that respondents never intended to create a trust, that personal property was not covered by the trust provisions of the Discipline, and that petitioners had waived those trust provisions. *See* Joint Rec. Extract to the Md. Ct. App. at E86-E92.

The Maryland Court of Appeals held that the circuit court failed to consider evidence that no trust was intended, and should have considered evidence that any requirement for a trust was waived, that any trust was revoked, and that personal property was outside the scope of the trust provisions of the Discipline. (*See* Pet. App. at 35a.)

In their "Question Presented," petitioners imply that the Court of Appeals directed the circuit court to "disregard the denomination's constitution." (Pet. at (i).) That statement is misleading. In fact, the Court of Appeals said the opposite, instructing the circuit court to review "*the denomination's polity, its constitution and other authoritative sources.*" (Pet. App. at 34a.) (emphasis supplied). What the Court of Appeals held was that petitioners' constitution may not be the *only* matter considered to the exclusion of other evidence, declaring "review solely of the doctrine and polity of the denomination simply is not sufficient." (*Id.*)

Ostensibly, the petition claims to support the neutral principles doctrine. In fact, petitioners urge the Court to reinterpret the doctrine out of existence and to create new law. Petitioners ask that this Court rule, as a matter of constitutional law, that Maryland must refuse to consider evidence that no trust was intended or created, or that the trust provisions of the Discipline were waived, or that any trust was revoked, or that the trust provisions of the Discipline do not refer to personal property. Petitioners would require the Court to rubberstamp AME Zion's doctrine as controlling in all property disputes, even if the evidence and state property laws require a different result. Under this bizarre interpretation of neutral principles, the denomination would become the final arbiter in all property disputes, and there would be no semblance of neutrality. The opinion below does not conflict with the decisions of this Court, and there is no conflict on matters of federal law with other states.

There is no overriding issue of national importance to justify review by this Court – particularly on an interlocutory basis. This case deals only with the application of Maryland summary judgment and trust law under the neutral principles

of law doctrine. Under neutral principles, there is no requirement for uniformity in state property laws, and the laws of other states may differ from Maryland law. Indeed, the constitutions, charters and polities of different churches also vary with respect to the ownership of church property.

Finally, the petition speculates that this property litigation will result in unconstitutional intrusions on religious freedom. The argument is fiction. The neutral principles of law doctrine is a time-tested, successful and constitutionally permissible way for states to resolve church property disputes. Petitioners cite no facts in this record or in any of the numerous church property cases decided in Maryland to sustain their contention that subjecting this property dispute to judicial determination would violate the First Amendment.

STATEMENT OF JURISDICTION

The Court is without jurisdiction to review the Maryland Court of Appeals decision for two reasons:

First, the decision is an interlocutory one for purposes of review under 28 U.S.C. § 1257(a). *See infra* Part I.

Second, in a summary judgment proceeding where the neutral principles of law doctrine calls for the application of Maryland law, the Court has "no supervisory power" to change state law regarding trusts or the standards for rendering summary judgment. *Smith* v. *Phillips*, 455 U.S. 209, 221 (1982). *See infra* Part II.

STATEMENT OF THE CASE

The Maryland Court of Appeals reversed partial summary judgment and remanded the case because the trial judge failed to consider evidence of a genuine dispute as to material facts. Maryland follows the usual rule that summary judgment may not be granted unless the court concludes there is no such dispute and that the moving parties are entitled to judgment as a matter of law. *See* Md. R. Civ. P. 2-501(a). As the Court of Appeals held, there are disputed facts as to whether From the Heart consented to create a trust of its property for the benefit of petitioners, whether petitioners waived the trust provisions of the Discipline, and whether those provisions applied to personal property. (*See* Pet. App. at 35a.)

In reversing the partial summary judgment, the Court of Appeals did not make new law, but relied on the decisions of this Court that authorize state courts to resolve property disputes involving church organizations in accordance with neutral principles of state law. (*See* Pet. App. at 1a-39a (citing to *Jones* v. *Wolf*, 443 U.S. 595 (1979); *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); *Presbyterian Church* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969)).)

The Circuit Court Decision: The Circuit Court for Prince George's County, Maryland awarded partial summary judgment to petitioners, ruling that all the real and personal property that From the Heart acquired prior to the date it terminated its membership in AME Zion "is subject to a trust in favor of . . . AME Zion." (Pet. App. at 43a.) The circuit court based its order solely on the text of petitioners' Discipline. (*See id.* at 41a-42a.) The order did not consider

the property deeds of respondent From the Heart, which provided that the property was held in fee simple without any trust. Nor did the order consider the corporate charters and by-laws of From the Heart that authorized it to acquire and hold property in its own behalf. Moreover, the circuit court failed to consider the pleadings in which respondents denied any intention to create a trust, and failed to consider evidence presented at the summary judgment hearing that petitioners had knowingly waived any trust requirement of its Book of Discipline. *See* Joint Rec. Extract to the Md. Ct. App. at E90-E92. Without any analysis, the circuit court order placed From the Heart's personal property in the trust although the trust provisions of the Discipline do not even refer to personal property. (*See id.* at 41a-43a.)

Although the circuit court formally stated that summary judgment was entered "under the neutral principles of property law," (*id.* at 43a), the recitation was a mere formality. The circuit court did not base its ruling on any Supreme Court or Maryland authority applying the neutral principles of law doctrine, or on any authority concerning Maryland trust or property law.

The Court of Appeals Opinion: On July 24, 2002, the Maryland Court of Appeals unanimously reversed and remanded the case to the circuit court where the matter is now pending. (*See* Pet. App. at 1a-39a.) In its opinion, the Court of Appeals followed the precedents of this Court that authorize states to apply neutral principles of law in deciding church property disputes, and the line of Maryland decisions that have applied neutral principles in such property cases. In particular, the Court of Appeals relied upon this Court's decisions in *Maryland & Virginia Eldership*, 396 U.S. at 367 (upholding Maryland law applying the neutral principles

doctrine) and *Jones*, 443 U.S. at 602-03, which referred, with approval, to the Maryland Court of Appeals' application of the neutral principles of law doctrine in *Maryland & Virginia Eldership*. The Court of Appeals' opinion in this case applies the same neutral principles analysis approved by the Court in those cases.

In deciding whether church property "was impressed with a trust, express or implied, in favor of [petitioners]," the Court of Appeals applied the following principles:

> This issue must be resolved without determining ecclesiastical questions, *Mt. Olive*, 348 Md. at 310, 703 A.2d at 199, (citing *Watson* v. *Jones*, 80 U.S. (13 Wall.) at 729, 20 L. Ed. at 676-77), and by applying "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church*, 393 U.S. at 449, 89 S. Ct. at 606, 21 L. Ed. 2d at 665. Stated simply, the neutral principles of law approach "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones* v. *Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 3025, 61 L. Ed. 2d 775, 785 (1979).

(Pet. App. at 27a.)

In delineating Maryland's substantive law pertaining to trusts, the Court of Appeals held that the creation of a trust "depends upon the intention of the settlor," and that "a trust will not be created where none in fact was contemplated." (*Id.* at 30a.) Under Maryland law, the burden of proof is on the party asserting a trust and that burden must be carried "by clear and convincing evidence." (*Id.* at 31a.) The Court of Appeals also declared that Maryland law provides that in the absence of a designation to the contrary a trust is revocable "by any act sufficient to manifest the settlor's intention to revoke the trust." (*Id.* at 33a.)

Contrary to what petitioners contend in their Question Presented, the Court of Appeals did *not* require the circuit court to "disregard" petitioners' constitution, *i.e.*, the Discipline. Rather, the Court of Appeals ruled that the circuit court had to consider the other relevant facts and circumstances *in addition to* petitioners' Discipline. (*See id.* at 34a.) The Court of Appeals held that on summary judgment, a review of the facts that consists "solely of the doctrine and polity of the denomination simply is not sufficient" to establish a trust. (*Id.*)

As the Court of Appeals stated, the issue is whether "there is in the record evidence, of which there is no genuine dispute, *see* Maryland Rule 2-501(a), that the church property was impressed with a trust, expressed or implied, in favor of A.M.E. Zion, as and when From the Heart acquired it." (Pet. App. at 27a.) Accordingly, the Court of Appeals reversed the partial summary judgment because the requirements for the creation of a trust under Maryland law were in dispute. (*See id.* at 33a-34a.) As the Court of Appeals stated:

> The trial court, however, did not consider the contrary evidence, i.e., From the Heart's

> intentional deeding of the property in its name only, not in trust, the national denomination's acknowledgment of, and acquiescence in, this deeding irregularity, From the Heart's amendment of its charter to remove any reference to the A.M.E. Zion church and to vest its trustees with even greater authority to control the property of the church, evidence that may be construed to suggest that From the Heart did not, in fact, consent to the trust provisions.

(*Id.* at 35a.)

REASONS FOR DENYING THE PETITION

The petition fails to make a case for review. On the jurisdictional level, the case is plainly interlocutory and does not fit within any of the recognized exceptions permitting interlocutory review under *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). The petition also asks the Court to exceed its supervisory powers by overruling Maryland law as to the state's requirements for summary judgment, and to overturn Maryland's common law of trusts.

The petition asks the Court to apply the neutral principles of law doctrine in resolving church property disputes by deferring to the doctrines of the denomination, and disregarding all evidence to the contrary. That approach would eviscerate the neutral principles decisions of this Court and throw into confusion the decisional law of all the states, including Maryland, that have relied upon the neutral principles of law doctrine since 1969 when this Court announced:

> [T]here are neutral principles of law, developed for use in all property disputes, which can be

> applied without 'establishing' churches to which property is awarded. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Hull Mem'l Church, 393 U.S. at 449.

There is no conflict between the decision of the Maryland Court of Appeals below and the Court's neutral principles of law precedents involving church property disputes. The same approach used by the Maryland Court of Appeals in this case was sustained by the Court in *Jones* and *Maryland & Virginia Eldership*.

Nor is there a constitutional law conflict that warrants the intervention of this Court between the Maryland Court of Appeals' decision in this case and cases decided in other states that involve differences in evidence and state property laws. As shown below, most of those cases endorsed the same factual inquiry ordered by the Maryland Court of Appeals in this case and did not rely solely on denominational documents. Moreover, the Georgia and Alabama cases relied on by petitioners to establish a "conflict" have not been followed by the highest courts in those states in later decisions. The fact that different cases involving different facts decided under different state property laws may have different outcomes does not implicate the First Amendment.

In a gross misstatement, petitioners argue that the resolution of this property dispute by a civil court applying established rules of Maryland property law would result in a "freewheeling" and overly-intrusive trial in violation of the First Amendment. The claim ignores the entire body of cases

in which church property disputes have been decided under the neutral principles of law doctrine – and disregards the principle declared by this Court in *Hull Memorial Church* that "civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." 393 U.S. at 499.

I. THE COURT LACKS JURISDICTION TO REVIEW THE INTERLOCUTORY DECISION OF THE MARYLAND COURT OF APPEALS

This Court need not even reach the merits of the petition for certiorari because, since the case was remanded for trial, there was no final judgment below. Under 28 U.S.C. § 1257(a), only "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari." As petitioners acknowledge, unless they can qualify under one of the four narrow exceptions to the rule of finality set forth in *Cox Broadcasting*, the petition must be dismissed. While petitioners attempt to rely on the third and fourth exceptions in *Cox Broadcasting*, neither applies here.

The third exception permits review of interlocutory state court decisions where the federal issue has been finally decided and would be unreviewable if the party seeking review lost on the merits. *See Cox Broad.*, 420 U.S. at 481. This exception does not apply. If respondents prevail at trial, nothing will prevent petitioners from seeking review in this Court at that time. *See Jefferson* v. *City of Tarrant*, 522 U.S. 75, 82-83 (1997). As *Cox Broadcasting* confirms, the third exception applies only where the party seeking interlocutory review will be literally prohibited from seeking review in this Court after the state proceedings are finished. *See Cox*

Broad., 420 U.S. at 481-82 (discussing *California* v. *Stewart*, 384 U.S. 436 (1966) and *North Dakota State Bd. of Pharmacy* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973)). This is not such a case, and petitioners do not even contend that an adverse decision will be unreviewable by this Court. Rather, they suggest that the third *Cox Broadcasting* exception applies because they have some sort of privilege not to be subject to a trial at all. (*See* Pet. at 21.) No such privilege exists. Church property disputes have been subject to judicial determination for decades. *See Jones*, 443 U.S. at 602.[1]

The fourth *Cox Broadcasting* exception is equally inapplicable. That exception allows review of non-final state court rulings if each of two requirements is satisfied: (1) reversing the state court ruling would actually end the litigation, "rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the [later] state proceedings," and (2) failure to grant immediate review would "seriously erode federal policy." *Cox Broad.*, 420 U.S. at 482-83. Neither test is satisfied here.

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1. The three cases petitioners cite (*See* Pet. at 22 n.5) make clear that the exception does not apply. Each case involved a constitutional grant of immunity from trial. *See Abney* v. *United States*, 431 U.S. 651, 659-62 (1977) (whether proceeding to trial would have violated the Double Jeopardy Clause); *Helstoski* v. *Meanor*, 442 U.S. 500, 507-08 (1979) (a former Congressman's claim of immunity from suit under the Speech and Debate Clause); and *Mitchell* v. *Forsyth*, 472 U.S. 511, 525-28 (1985) (whether further proceedings would violate the petitioner's immunity, as a government official, from actions for money damages based on his official actions). Here, by contrast, nothing will prevent petitioners from seeking review after the remand proceedings are concluded.

First, any decision by this Court at this stage would not end the litigation as the decision appealed from involves a *partial* summary judgment. Numerous claims remain in the consolidated proceeding below including a myriad of claims in the counterclaims and countersuit filed by petitioners, such as allegations of fraud, conspiracy and usurpation, that have been consolidated with the original action. There is no reason for this Court to intervene in this litigation thicket at an interlocutory stage.

The second requirement for the fourth *Cox Broadcasting* exception – that a failure to grant interlocutory review would "seriously erode federal policy" – is also not satisfied. In this case, the Court of Appeals' decision *promotes* the federal policy of deciding church property disputes pursuant to neutral principles of law. *See Jones*, 443 U.S. at 602; *Hull Mem'l Church*, 393 U.S. at 449. Petitioners assert that there is a contrary right of religious organizations to "order[ ] their own affairs." (Pet. at 22.) That assertion begs the question. Petitioners cannot bootstrap their way into the fourth *Cox Broadcasting* exception merely by asserting that their disagreement with the Court of Appeals rises to the level of a constitutional claim. For example, in *Florida* v. *Thomas*, 532 U.S. 774 (2001), a unanimous Court dismissed a writ of certiorari for lack of a final state court decision in a criminal case involving the constitutionality of a search. The Court held that the fourth *Cox Broadcasting* exception did not apply, notwithstanding the presence of a constitutional issue, because "the State can make no claim of serious erosion of federal policy that is not common to all run-of-the-mine decisions suppressing evidence." *Thomas*, 532 U.S. at 780; *accord Flynt* v. *Ohio*, 451 U.S. 619, 621 (1981) (dismissing a writ of certiorari because there was no final decision in a state court criminal obscenity proceeding, notwithstanding petitioner's claim that he was being selectively prosecuted in violation of the Equal Protection Clause).

Unlike the few cases that have been granted interlocutory review under the fourth *Cox Broadcasting* exception, this case does not involve prior restraints on free speech or the press, or restraints on the functioning of the government. This case concerns a dispute over the ownership of property, and nothing more. *See Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 54-57 (1989); *Miami Herald Publ'g Co.* v. *Tornillo*, 418 U.S. 241, 246-47 (1974); *see also Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U.S. 354, 370 n.11 (1988); *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 497 n.5 (1983). Accordingly, the petition for certiorari must be denied under 28 U.S.C. § 1257(a).

II. THE COURT DOES NOT HAVE SUPERVISORY POWER TO DECIDE THE SUBSTANTIVE RULES OF MARYLAND PROPERTY LAW OR MARYLAND PROCEDURES GOVERNING SUMMARY JUDGMENT

It is black letter law that this Court lacks authority to override state supreme courts on issues of state law. *See Dickerson* v. *United States*, 530 U.S. 428, 438 (2000) ("It is beyond dispute that we do not hold a supervisory power over the courts of the several States."); *Smith*, 455 U.S. at 221 ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."). This rule applies both to state substantive laws and to state procedures. "'Federal judges . . . may not require the observance of any special procedures'" in state courts "'except when necessary to assure compliance with the dictates of the Federal Constitution.'" *Dickerson*, 530 U.S. at 438-39 (quoting *Harris* v. *Rivera*, 454 U.S. 339, 344-45 (1981)).

The Maryland Court of Appeals carefully described the standards for creating a trust under Maryland law. That court also set forth the requirements for summary judgment under Maryland law. This Court has no authority to interfere with the Maryland Court of Appeals' holdings as to the requirements of Maryland property law or with that court's conclusion that, under Maryland's rules of procedure, summary judgment should have been denied because there were genuine disputes as to material issues of fact.

III. THE DECISION BELOW APPLIES THE NEUTRAL PRINCIPLES DOCTRINE IN PRECISELY THE MANNER PRESCRIBED BY THIS COURT

Even before this Court announced the neutral principles doctrine in *Hull Memorial Church* and *Jones*, Maryland had been applying neutral principles of law in church property disputes. *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 241 A.2d 691 (Md. 1968) ("*Eldership I*"), *vacated and remanded*, 393 U.S. 528, *reaff'd*, 254 A.2d 162 (Md. 1969) ("*Eldership II*"), *appeal dismissed*, 396 U.S. 367 (1970).

In *Eldership I*, the Court of Appeals set out three methods that would permit a denomination to maintain control of local church property when local churches withdraw from the denomination: (i) the denomination could require a reversionary clause in the property deeds of a local church, (ii) the denomination could provide in its constitution for the reversion of local church property upon withdrawal of the local church, or (iii) the denomination could obtain a statute that provides for that result. *Eldership I*, 241 A.2d at 699. However, in *Eldership I*, as in this case, there were no reversionary provisions in the deeds or in the denomination's

constitution and there was no applicable statute. *Id.* at 700. Accordingly, the Court of Appeals examined the two local churches' articles of incorporation, property deeds and the denomination's constitution. Upon review, the Court of Appeals concluded that, under Maryland's corporation law, the local churches retained control of their property. *Id.* at 700-07. *Eldership I* was appealed to this Court, and it was remanded for reconsideration in light of *Hull Memorial Church*, which had been decided in the interim. *See Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 393 U.S. 528 (1969).

On remand, in *Eldership II*, the Court of Appeals held that it had complied with *Hull Memorial Church* in all respects and had applied the neutral principles of law doctrine as promulgated in *Hull*. *Eldership II*, 254 A.2d at 170. *Eldership II* was then appealed to this Court, and, in *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970), the appeal was dismissed because "the Maryland court's resolution of the dispute involved no inquiry into religious doctrine." *Id.* at 368. In a concurring opinion, Justice Brennan, with Justices Douglas and Marshall joining, stated:

> '(N)eutral principles of law, developed for use in all property disputes,' *Presbyterian Church, supra*, 393 U.S. 440 at 449, 89 S. Ct. at 606, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, *civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws.*

Id. at 370 (emphasis supplied).

Nine years later in *Jones*, this Court referred to *Eldership II* as an example of how the Court of Appeals' application of neutral principles was able to solve a church property dispute

> *on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.* Finding that this analysis entailed 'no inquiry into religious doctrine' the Court dismissed the appeal for want of a substantial federal question.

Jones, 443 U.S. at 603 (emphasis supplied).

Even the dissenting justices in *Jones* endorsed the Maryland Court of Appeals' resolution of the property dispute in *Eldership II* by examining all the relevant evidence, including

> *the constitution of the general church, the charters of the local churches, the deeds to the property at issue and the relevant state statutes. . . . [T]he state court canvassed all of these sources, and others. . . .* (citation omitted).

Id. at 612 n.1 (Powell, J., dissenting) (emphasis supplied).

In this case, the Court of Appeals followed exactly the same analysis used in *Eldership I* and *II*, which was approved in *Maryland & Virginia Eldership*, and which all nine justices in *Jones* viewed as consistent with constitutional requirements.

As applied by the Maryland Court of Appeals, the neutral principles doctrine favors neither withdrawing churches nor denominational bodies in property disputes. Withdrawing congregations have prevailed in some of the Maryland cases[2] while parent churches have prevailed in others.[3] The outcomes are based on the evidence, not on church doctrine.

Petitioners have misunderstood the thrust of *Jones*, where the Court declared that "a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." 443 U.S. at 602. Instead, petitioners selectively quote one sentence as to the possible use of a trust provision in the constitution of the general church to ensure that the denomination will retain the church property. (*See* Pet. at 2, 11-12.) However, the context of that statement shows that the Court was delineating a range of options that states may use in determining ownership in church property disputes. As *Jones* declared,

> The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law

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2. *See Mt. Olive African Methodist Episcopal Church of Fruitland* v. *Bd. of Incorporators of the African Methodist Episcopal Church, Inc.*, 703 A.2d 194 (Md. 1997); *Eldership II*, 254 A.2d 162 (Md. 1969); *Eldership I*, 241 A.2d 691 (Md. 1968); *Smith* v. *Church of God at Locust Valley*, 326 F. Supp. 6 (D. Md. 1971) (applying Maryland law).

3. *See Babcock Mem'l Presbyterian Church* v. *Presbytery of Baltimore of the United Presbyterian Church*, 464 A.2d 1008 (Md. 1983), *cert. denied*, 465 U.S. 1027 (1984); *Polen* v. *Cox*, 267 A.2d 201 (Md. 1970).

> governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.

Jones, 443 U.S. at 606.

Jones gave states an option to use a right of reversion or trust language in order to ensure that the hierarchical church can retain church property. Maryland has elected to employ the "right of reversion" option. However, petitioners did not put a reversionary provision in their Discipline, or require such a provision in the property deeds of member churches. Absent those reversionary provisions, Maryland courts apply neutral principles of law to determine whether a trust was created.

The Court of Appeals did not "disregard" the trust language in the Discipline (as petitioners' Question Presented misleadingly states); it directed the circuit court to consider the denomination's constitution, along with other relevant evidence, to determine if a trust was created. (*See* Pet. App. at 34a.) However, petitioners resist having the dispute decided on the evidence. They advocate a rule where the outcome of the neutral principles approach would be foreordained,

contrary to what the Court declared in *Jones*. 443 U.S. at 606 ("Under the neutral-principles approach, the outcome of a church property dispute is not foreordained."). Such a rule would be the very opposite of neutral, and would effectively overturn the neutral principles doctrine.

In applying neutral principles under Maryland common law, a party asserting the existence of a trust has the burden to establish by clear and convincing proof that the settlor intended to create a trust. Contrary to what petitioners argue, *Jones* did not change Maryland trust law or reverse *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), and establish a different federal common law of trusts that would supercede the laws of all 50 states in church property disputes.

Under neutral principles, the Court of Appeals was required to apply Maryland trust law and the rules of summary judgment. It did so, and concluded that there were material disputes as to whether a trust was intended. (*See* Pet. App. at 35a.) It also found that there was a dispute whether personal property was even included in the trust provisions of the Discipline. (*See id.* at 18a n.19.) The circuit court ignored these fact disputes. Notably, petitioners do not even attempt to defend the partial summary judgment concerning personal property. The Court of Appeals correctly applied the neutral principles doctrine in reversing and remanding the partial summary judgment.

IV. THERE IS NO CONFLICT UNDER RULE 10

1. *There Is No Conflict With The Decisions Of This Court*: The neutral principles of law analysis followed by the Maryland Court of Appeals in this case is the same analysis that the Court of Appeals used in *Eldership I* and *II*, and that this Court approved in *Jones* and *Maryland & Virginia Eldership*. There is no conflict on an important question of federal law between the Court of Appeals' decision and relevant decisions of this Court. *See* Sup. Ct. R. 10(c).

2. *There Is No Conflict On An Important Federal Question Between the Court of Appeals' Decision and Decisions of Another State Court of Last Resort*:

Petitioners contend that this Court should grant certiorari to resolve an alleged conflict between the decision of the Maryland Court of Appeals and decisions by other states involving church property disputes. In fact, there is no conflict on any issue of federal law because both the decision below and the decisions of the other states applied the "neutral principles of law" approach of *Jones*. The cases on which petitioners rely show differences in result, but different results do not establish a "conflict" of constitutional law. Similar church property cases can involve different state property laws and different issues of fact. Such differences do not create a conflict involving an "important federal question" as required by Supreme Court Rule 10(b). Petitioners misunderstand that *Jones* did not mandate uniform property law for all states. The teaching of *Jones* and the other church property cases decided by the Court is that as long as a state applies its own law in a neutral manner to the facts of each individual case, the state complies with the First Amendment.

Thus, the three Georgia and Louisiana cases relied on by petitioners as establishing a "conflict" involved state laws that differed from Maryland law. No federal law conflict is involved. In both *Carnes* v. *Smith*, 222 S.E.2d 322 (Ga. 1976), *cert. denied*, 429 U.S. 868 (1976), and *Crumbley* v. *Solomon*, 254 S.E.2d 330 (Ga. 1979), the courts relied on Georgia statutes providing that property held by a local church shall be held "'according to the mode of church government'" and "'subject to the authority of the church or religious society.'" *Carnes*, 222 S.E.2d at 327-28 (quoting the Georgia statutes); *Crumbley*, 254 S.E.2d at 332-33 (same). Similarly, in *Fluker Community Church* v. *Hitchens*, 419 So. 2d 445 (La. 1982), the Louisiana Supreme Court relied on a state statute that expressly dealt with the role that a denominational constitution plays in church property disputes. *See id.* at 447-48.

Two remaining cases relied on by petitioners involve differences in *evidence*. In *Church of God Pentecostal, Inc.* v. *Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998), the Mississippi Supreme Court ruled in favor of a local church on the basis of the *evidence* presented that the local church did not hold the property in trust. The "facts and circumstances" inquiry that the Mississippi court conducted, *id.* at 207, is exactly what the Maryland Court of Appeals ordered here.

Similarly, in *Parent* v. *Roman Catholic Bishop*, 436 A.2d 888 (Me. 1981), the Maine Supreme Court upheld summary judgment against a local church because there was no evidence presented by the local church to refute that the general church held title to the property. *See id.* at 890. By contrast, in this case, it is undisputed that From the Heart is the titleholder.

Moreover, the two principal cases relied on by petitioners to establish a "conflict" have not been followed in their own jurisdictions. The petition asserts that *African Methodist Episcopal Zion Church v. Zion Hill Methodist Church, Inc.*, 534 So. 2d 224 (Ala. 1988) ("*Zion Hill*") "presents the starkest conflict with the Maryland Court of Appeals' decision." (Pet. at 14.) However, petitioners fail to disclose that the Alabama Supreme Court and the intermediate appellate court in Alabama have *not* followed *Zion Hill*. Ten years after the decision in *Zion Hill*, the Alabama Supreme Court decided *Haney's Chapel United Methodist Church v. United Methodist Church*, 716 So. 2d 1156 (Ala. 1998) ("*Haney's Chapel*"), and refused to award local church property to a denomination after the local congregation withdrew from the parent church. In *Haney's Chapel*, the denomination claimed title to the local church property on the basis of the hierarchical relationship of the local and national church and the denomination's Book of Discipline that required all property of the local church to be held in trust for the denomination. *See id.* at 1157. The Alabama Supreme Court based its decision on the *trial record* (not on summary judgment) where the evidence showed that the local church was not, in fact, in a hierarchical relationship with the denomination, and that the deeds conveyed the property to the local church – not in trust to the denomination. *Zion Hill* was rejected as authority because it did not involve *any* deed. *See id.* at 1158. Thus, the case that petitioners cite as the "starkest conflict" turns out to have been rejected by the same court that authored it.[4]

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4. Even *Zion Hill* itself did not hold that the language from the Book of Discipline on which petitioners rely was determinative. Rather, that court relied on extensive evidence in the record at trial – including other documents and the testimony of numerous witnesses on the issue of consent to hold property in trust. *Zion Hill*, 534 So. 2d at 225-26. This is exactly the kind of inquiry that the Maryland Court of Appeals directed the circuit court to undertake in this case.

AME Zion also relies on the 1976 Georgia decision in *Carnes*. (*See* Pet. at 12-13.) However, in a later decision – which AME Zion does *not* cite – the Georgia Supreme Court held that where a local church did *not* deed its property in trust to the denomination, the local church *retained* its property when it withdrew, despite the requirement in the Discipline that property deeds must contain trust clauses. *See Coles v. Wilburn*, 245 S.E.2d 273, 274 (Ga. 1978).

In short, there is no conflict.

V. THE ASSERTION THAT A TRIAL WILL BE UNCONSTITUTIONALLY INTRUSIVE IS UNFOUNDED

There is not the slightest support in the record for petitioners' assertions that the Court of Appeals' decision "throws open the floodgates," (Pet. at 23), and that the remand proceeding will be "freewheeling," (*id.* at (i)), or a "standardless romp" through matters of religious doctrine, (*id.* at 19), or "invasive and unconstitutional." (*Id.* at 8.) This parade of hyperbole in the petition is based entirely on speculation. There is not a scintilla of factual support or any citation to the record that a trial of the property dispute under neutral principles of law will be unconstitutionally intrusive. Maryland courts have been applying the same neutral principles doctrine since *Eldership I* was decided, without any constitutional impediment.

Petitioners speculate that a judicial determination as to whether they waived the trust provisions of the Discipline would result in "an improper examination of church doctrine, governance and practice." (Pet. at 6.) Petitioners are in error. Waiver is a recognized defense, *see* Md. R. Civ. P. 2-323(g),

and the evidence of record is that petitioners waived the trust provision of the Discipline. The evidence consists of a *published* admission by AME Zion. (*See* Pet. App. at 19a n.20.) Waiver is also a defense to the blunderbuss charges of conspiracy, fraud, usurpation, etc. raised by petitioners in their consolidated countersuit. *See* Complaint of Phil.-Balt. Annual Conf. & Full Gospel A.M.E. Zion Church at 24-32.

Petitioners argue contradictory positions. They agree, as they must, that the Constitution prohibits "determining ecclesiastical questions," quoting *Hull Memorial Church*. (Pet. at 16.) Nonetheless, they argue that courts must defer to the trust provisions of the Discipline *because* it represents church doctrine. (*Id.* at 9.) The plain fact is that no case cited by petitioners, and none that counsel for respondents is aware of, has prohibited a trial of a *property* dispute because one or more of the parties were churches. As the Court of Appeals recognized, the trial court must conduct its inquiry "in purely secular terms without relying 'on religious precepts in determining whether . . . the parties have intended to create a trust.'" (Pet. App. at 28a (quoting *Jones*, 443 U.S. at 604).)

In effect, petitioners seek an advisory opinion in an interlocutory proceeding on the basis of speculative arguments that the Maryland courts will violate constitutional rights. (*See* Pet. at 20 n.3.) Certiorari should not be granted to remake constitutional law based on hypothetical issues that may never arise. At a minimum, this Court should have the benefit of a screening of those issues by the Maryland state courts. The petition simply assumes that Maryland judges and juries will disregard the Constitution. The assumption is unwarranted.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 26, 2002

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(3)

Supreme Court U.S.
FILED
DEC 26 2002
OFFICE OF THE CLERK

No. 02-789

IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF *AMICI CURIAE* THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.; THE AFRICAN METHODIST EPISCOPAL CHURCH; THE AMERICAN JEWISH CONGRESS; THE CHRISTIAN METHODIST EPISCOPAL CHURCH; THE COMMUNITY OF CHRIST; THE EPISCOPAL CHURCH; THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE EVANGELICAL COVENANT CHURCH; THE FOUNDATION FOR THE PRESERVATION OF THE MAHAYANA TRADITION, INC.; THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH; THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL; CLIFTON KIRKPATRICK, GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), IN SUPPORT OF PETITIONERS

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34 pp

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are a diverse group of religious organizations from a variety of religious traditions. Collectively, they have tens of millions of members and adherents across the United States, including in Maryland, meeting in tens of thousands of local houses of worship. The decision below abridges the right of religious organizations like *amici* to effectively own and control religious property. More profoundly, the decision below promotes division within religious organizations and virtually assures that Maryland's civil courts will directly adjudicate issues of religious doctrine, polity, and practice, in violation of the consistent pronouncements of this Court for over a century and in derogation of the right of religious organizations to govern their internal affairs. Individual statements of interest may be found in the appendix.

REASONS FOR GRANTING THE PETITION

This case is of great significance to numerous churches across the nation.[2] Narrowly, it is about the legal rules that govern the adjudication of church property disputes – a subject of vital importance to virtually every religious denomination. But more broadly, this case is about the fundamental right of churches to establish polities or forms of church governance that are in harmony with their respective theological understandings of religious authority. The rule established by the Maryland Court of Appeals directly subverts that right by injecting civil courts into the substance of intra-church disputes between denominations and disaffected congregations. It requires the trial court to examine and substantively interpret not only a denomination's polity but also the degree to which the local congregation has accepted that polity and whether, notwithstanding such acceptance, the denomination's course of ecclesiastical conduct has worked a waiver of the denomination's rights.

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1. Counsel for *amici* state that they authored this brief in whole and that no person or entity, other than *amici*, made a monetary contribution to the preparation or submission of this brief.

2. The term "churches" is used inclusively to denote religious institutions – be they strictly speaking churches, synagogues, mosques, ashrams, or ministries of any type.

Such an analysis will unavoidably entangle courts in doctrinal and ecclesiastical disputes. This level of scrutiny is in direct conflict with prior decisions of this Court protecting the autonomy of churches to define their own doctrines and polities and to establish internal rules for dealing with religious disagreements. The decision below gives Maryland's civil courts power to essentially disregard a denomination's theological understanding of the proper locus of ecclesiastical authority. Here, the court effectively ignored the hierarchical elements of the polity of Petitioner African Methodist Episcopal Zion Church ("AME Zion"), treating the church as if it were far more congregational than it actually is. The intrusive approach of the Maryland Court of Appeals will make civil courts an active force in shaping religious polities – a result that contravenes over a century of this Court's church autonomy jurisprudence. *Certiorari* is necessary to resolve the conflicts identified by the Petitioner and to ensure that fundamental religious choices about denominational governance are made by churches and not by civil courts.

ARGUMENT

Amici agree with Petitioner that this Court's immediate review is needed because the decision below squarely conflicts with decisions by the highest courts of other States. As a result of that conflict, these *amici*, most of whom are international or national denominations, are now subject to different and irreconcilable rules and standards depending on the State in which a dispute arises. For *amici*, this is an intolerable situation, and is reason enough for this Court to grant certiorari. However, *amici* also wish to bring to the Court's attention a few additional considerations that make this Court's immediate review all the more important.

I. The Decision Below Will Have a Tremendous Negative Impact on the Ability of Religious Denominations to Own and Control Their Own Property.

The ability of religious denominations to structure their property affairs in a stable and predictable manner is essential to their health and even survival. A denomination can literally be

dismembered by schismatic dissenters if it lacks the legal means to secure ownership and control of its own property. Predictable and consistent legal rules for adjudicating church property disputes are therefore critical. Moreover, this Court has long held that the First Amendment forbids civil courts from examining and interpreting religious doctrines, church polity, and ecclesiastical governance and practice – a limitation that significantly constrains how courts may adjudicate church property disputes.

The decision below will have a tremendous negative impact on the ability of religious denominations to own and control their own property. It will also inject civil courts into substantive ecclesiastical matters, in violation of the First Amendment.

1. In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court allowed the States to "adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters. . . ." *Id.* at 602 (citation and quotation marks omitted). Specifically, this Court approved the "neutral principles of law" approach as one that (at least in theory) would not require the constitutionally forbidden inquiry into church doctrine or polity. *Id.* at 602-04. Moreover, the Court expressly stated that one way hierarchical churches could ensure that those loyal to the denomination retain control over church property is by inserting, "before the dispute erupts," express "trust" clauses in their constitutions providing that local church property is held in trust for the entire denomination. *Id.* at 606. This Court assured churches that "the civil courts will be bound to give effect to the result indicated" by such clauses. *Id.*

Unfortunately, the various neutral principles approaches adopted by the States have spawned numerous problems and have frequently resulted in civil courts taking sides in religious disputes even as they proclaim their neutrality. It is important in this regard to remember that *Jones v. Wolf* was decided 5-4, and that Justice Powell's dissent predicted many of these problems. Justice Powell argued that as a practical matter the neutral principles standard would lead to civil courts overturning religious decisions and religious self-understandings. *Id.* at 611

614 (Powell, J., dissenting). The dissenters thought the only safeguard for religious liberty was for civil courts to defer to the decision of the highest church authority recognized by both sides before the dispute arose. *Id.* at 614.

The majority emphatically responded that Justice Powell's fears were misplaced and that, to the contrary, the neutral principles approach would guard against civil court intrusions into matters of religious doctrine, practice, and polity. *See id.* at 604-606. This was the context of this Court's assurance that denominations could provide for control of property in a trust clause in their denominational constitution, or by other clearly stated means. *See id.* at 606. Rather than a minor detail of the opinion, the Court advanced the trust-clause approach as an important safeguard for religious self-determination. Denominations could control their own polity (including property) either under a traditional regime of deference to the decision of the highest church authority, as the dissent advocated, or by writing in advance of any dispute a clear rule that would be enforced under neutral principles.

Many denominations feared at the time of *Jones v. Wolf* that even Justice Powell had understated the danger – that "neutral principles" would become a license for civil courts to inject themselves into religious disputes and to impose their own notions of a proper polity. These fears are coming to fruition in the state courts, and this Court's solemn guarantee of religious self-determination in *Jones* often goes for naught. Courts generally understand, and defer to, unambiguously hierarchical polities.[3] But there is an observable tendency in the decisions – one that was clearly on display in this case – to congregationalize connectional and presbyterial polities. Courts have generally not understood the combination of hierarchical

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3. *See, e.g., Kleppinger v. Anglican Catholic Church*, 715 A.2d 1033 (N.J. Super, 1998); *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781 (1994); *Maciejewski v. Breitenbeck*, 413 N.W.2d 65 (Mich. App. 1987); *Struemph v. McAuliffe*, 661 S.W.2d 559 (Mo. App. 1983); *Parent v. Roman Catholic Bishop of Portland*, 436 A.2d 888 (Me. 1981); *Galish v. Catholic Bishop of Chicago*, 75 Ill. App. 3d 538 (1979).

and congregational elements in such polities and so tend to treat them as congregational for purposes of property disputes. This is no doubt encouraged by the view that congregational polities better fit American values of democracy and local control. As a result, since *Jones*, under the guise of neutral principles, courts have disproportionately sided with congregations in disputes with connectional and presbyterial denominations.[4]

2. Relying on this Court's assurance in *Jones v. Wolf*, numerous denominations, including many of these *amici*, have come to depend on trust clauses to protect their property rights. *See* Petition at 15 n.2 (listing denominations). As explained in the Petition, the *Book of Discipline* of AME Zion contains such a trust clause. When one of AME Zion's local congregations and its pastor decided to leave the denomination, there should have been no doubt that the congregation's property remained with AME Zion. Nevertheless, the court below concluded that the First Amendment precludes a civil court from relying on the very type of trust clause this Court expressly endorsed in *Jones*. The court held that the trial court must instead conduct a detailed and invasive inquiry into the facts and circumstances of the relationship between AME Zion and its local congregation to determine whether the local congregation specifically consented to the trust provisions in the *Book of Discipline* and whether AME Zion at some time waived its trust rights. Pet. App. 31a, 34a. In so doing, the court treated AME Zion's connectional polity as effectively congregational. This was error not only as to property rights, but as to fundamental religious choices about denominational governance.

This decision is potentially disastrous for the many denominations with local congregations in Maryland, including many of these *amici*, whose valuable and sometimes historic properties are secured to the denomination via similar trust

4. *See, e.g., Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317 (1985); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *Bjorkman v. Protestant Episcopal Church in the United States of America*, 759 S.W.2d 583 (Ky. 1988).

clauses. It will create intolerable uncertainty and spawn legal disputes regarding ownership of religious property. If, contrary to this Court's express teaching in *Jones*, trust clauses can no longer be relied on as the last word, the legal status of many hundreds of religious properties in Maryland will now be subject to challenge and revision. The ability to leave with church property is often the key factor in whether a disgruntled congregation or minister remains affiliated with the denomination. The decision below, with its highly subjective inquiry into consent and waiver, holds open the prospect that ultimate control of numerous properties that have long been presumed to be held in trust for the denomination might in fact be subject to challenge. This is an open invitation for unending legal disputes over church property. The decision will foster division within religious organizations rather than ensuring a position of government neutrality in religious disputes. In brief, if writing a clear rule in a trust clause does not suffice to secure a denomination's property, and if every church property dispute must be litigated under the evolving secular doctrines of consent and waiver, then the guarantee in *Jones* of religious liberty has been betrayed, and no church can be assured of control of its own polity in any case involving property.

Further, the decision below will require an invasive civil court examination of a denomination's religious doctrines, the structure and governance of its polity, and the ecclesiastical practices and private communications of its clergy. All aspects of a church's ecclesiastical relationships will now be fair game at trial. As explained at length below, such intrusions are absolutely forbidden by the First Amendment. This Court has never permitted the sort of inquisition into internal religious matters that the Maryland Court of Appeals has now mandated.

3. A specific example illustrates some of the problems created by the decision below. *Amicus* African Methodist Episcopal Church ("AME") has a connectional polity that is substantially similar to that of Petitioner AME Zion. As with AME Zion, AME's *Discipline* contains a trust clause providing that local church property is held in trust for the denomination

as a whole. *Doctrine and Discipline of the African Methodist Episcopal Church* 57 (2000).

Bishops have significant (though certainly not exclusive) authority within AME's polity, including the authority to make changes in the assignments of local pastors (*id.* at 143), and indeed pastors are frequently assigned to new congregations. Sometimes, however, a pastor becomes so popular that local parishioners (perhaps at the behest of the pastor) reject the authority of the bishop and threaten to assert ownership and control over local AME property and start a new church if their pastor is transferred.

Given *Jones* and AME's trust clause, there should be no question that in such a situation AME would retain control over its property. To hold otherwise would dramatically alter AME's polity, transferring ecclesiastical authority away from the bishops and the governing bodies of the denomination and giving it to local congregations and pastors. Under *Jones*, that outcome appeared to be totally foreclosed. But the Maryland Court of Appeals has rejected any sort of firm reliance on trust clauses in church constitutions and instead requires a case-specific inquiry into the specific religious facts of the situation. The uncertainty such a rule creates could well trigger a chain reaction of defections within AME that causes tremendous damage to the denomination. Indeed, AME lost a local church in Maryland precisely because of Maryland's refusal to recognize AME's trust clause, notwithstanding that the local church had been expressly affiliated with the denomination for more than a century. *See Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of the A.M.E. Church Inc.*, 703 A.2d 194 (Md. 1997).

II. The Decision Below Conflicts With Long-Established Decisions of this Court Precluding Intrusive Civil Court Inquiries Into Matters of Church Doctrine, Polity, and Practice.

For all religious traditions, the governance of religious organizations and the allocation of religious authority therein lie at the heart of the free exercise of religion. For example,

the nature and locus of religious authority is one of the fundamental disagreements among Christian denominations. It was central to the Reformation. The Roman Catholic Church is organized hierarchically, with authority at any given time flowing down from the Pope, and over time flowing through the claim of direct apostolic succession from Jesus and his appointment of Peter to lead the church. VERGILIUS FERM, AN ENCYCLOPEDIA OF RELIGION 667 (1945). Luther rejected the authority of the Pope and Calvin went much further and rejected the office of bishops. *Id.* at 456-457; 114. The Church of England retained bishops claiming apostolic succession, and the Puritan and Presbyterian dissenters, following Calvin, rejected those bishops. *Id.* at 197-173; 628-629; 605-606. This disagreement was one of the central issues in the English Civil War. "No bishop, no king" was a slogan of the Anglican royalists, who claimed that the rejection of bishops would lead to rejection of monarchy. That turned out to be correct for as long as Puritans ran the country. THOMAS J. CURRY, THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT 1-2 (1986); *see generally* THE BEGINNINGS OF ENGLISH PROTESTANTISM (Peter Marshall and Alec Ryrie, eds., 2002).

This memory ran strong in the time of the American founders. Hostility to bishops was a feature of late eighteenth century American religion, and disagreements over church polity were salient to those who wrote American guarantees of religious liberty. CURRY, *supra*, at 126-129; *see generally* JOHN EIDSMOE, THE FAITH OF OUR FOUNDING FATHERS (1987). These disagreements over church polity were a fundamental issue as Protestantism evolved and divided. Disagreements over governance were driven by theological disagreements – about the apostolic succession, about the authority of scripture, about the authority of individual interpretation of scripture, and other issues. They are not mere bureaucratic formalities without religious significance.

Today, church polities cover a continuum of arrangements, from purely hierarchical on one end to purely congregational on the other. Roman Catholics remain unambiguously hierarchical. FERM, *supra*, at 667. Baptists, on the other hand, are extremely congregational: each congregation is entirely independent, and no Baptist convention has any authority over any Baptist congregation. *Id.* at 54-56; THE STRUCTURE OF AMERICAN CHURCHES: AN INQUIRY INTO THE IMPACT OF LEGAL STRUCTURES ON RELIGIOUS FREEDOM 20-21 (James A. Serritella, ed., forthcoming 2003) (manuscript on file with the Center for Church/State Studies, DePaul University College of Law).

Somewhere in between are a range of polities known as presbyterial or connectional. These polities combine elements of hierarchy and congregationalism. Some of them have elected hierarchies, in which authority flows up from congregations and individual believers. Some of them have retained bishops but added elected conferences. In some denominations, clergy are appointed by the bishops; in some by elected bodies; in some by individual congregations. So too with church property: in some church property is controlled by individual congregations; in some by elected bodies at the denominational level; in some by bishops. *See* Serritella, *supra* at 21.

Regardless of the religion, a denomination's right to choose among differing polities is a fundamental feature of religious liberty. Each denomination is entitled to legal respect for the governing structure that it believes God has ordained or that will best serve its religious interests. For a secular court to rearrange a church's polity, advertently or inadvertently, is to interfere with a fundamental religious choice.

Petitioner AME Zion Church has a connectional polity with substantial authority at the denominational level, divided between a bishop and annual and general conferences, and some authority at the congregational level. Of greatest relevance here, church property is held in trust for the denomination by the unambiguous terms of the church's constitution. When the Maryland court undertakes to review all this and apply its own subjective standards of congregational consent and

denominational waiver, it is rearranging the AME Zion polity to its own preferences. It is making AME Zion more congregational than its own polity provides. As this Court has consistently held for more than 130 years, civil courts have no authority or competence to make such determinations, and the First Amendment forbids them from adopting approaches to church property disputes that require them to do so.

1. This Court's decisions have long "radiate[ed] . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation – in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871)). "[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'" *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 341 (1987) (Brennan, J., concurring).

Perhaps the earliest of this Court's church autonomy decisions is *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), which involved a dispute between two factions of the Presbyterian Church of the United States for control of a local church building. *Id.* at 691-94. Much as here, the dispute centered on which faction had the correct understanding of church doctrine and governance. Consistent with English precedent, the trial court entertained the action and issued a ruling after examining relevant religious doctrines and the church's polity and practices. On appeal, this Court dismissed the entire matter for lack of subject matter jurisdiction. Rather than become entangled in an internal church matter, this Court affirmed the exclusive jurisdiction of the church's highest governing body to adjudicate such issues according to the church's own doctrines, rules, and customs. *Id.* at 727. This Court reasoned:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any

> religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general associations, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.*

Id. at 728-29 (emphasis added). The lack of technical competence of civil courts to pass on issues of church doctrine and governance was another key basis for the decision. *See id.* at 729.

With the same concern for church autonomy, this Court in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), struck down a statute that entangled the government in the ecclesiastical affairs of the Russian Orthodox Church. *Id.* at 106-07. Relying on *Watson*, the Court held that state intrusion into church governance violates the First Amendment. "Legislation that regulates church administration, the operation of the churches, [or] the appointment of clergy . . . prohibits the free exercise of religion." *Id.* at 107-08. This holding was later extended to include intrusions by courts through litigation. *See Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960). Issues of church governance are "strictly a matter of ecclesiastical government" and thus of no concern to the state. *Kedroff*, 344 U.S. at 115. State intrusion into the ecclesiastical affairs of a church "violates [the] rule of separation between church and state" (*id.* at 110) and contravenes "the philosophy of ecclesiastical control of church administration and polity." *Id.* at 117.

Likewise, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), this Court held that the rule of judicial non-interference "applies . . . to church disputes over church polity and church administration." *Id.* at 710. The Court

reiterated that under the First Amendment "'civil courts exercise no jurisdiction'" over "'a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.'" *Id.* at 713-14 (quoting *Watson*, 80 U.S. (13 Wall.) at 733-34). Disgruntled ministers or congregations cannot invoke the power of civil courts to overturn a denomination's ecclesiastical decisions. *Id.* at 714-15. "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government. . . ." *Id.* at 724.

This Court has been particularly vigilant in ensuring that civil courts do not become involved in the interpretation of religious doctrines, an issue that often arises in church property disputes like the one here. Thus, in *Presbyterian Church v. Mary Elizabeth Blue Hull Church*, 393 U.S. 440 (1969), this Court overturned Georgia's "departure-from-doctrine" test for resolving church property disputes because it required an inquiry into religious doctrines and practices. This Court held that civil courts have no authority to "engage in the forbidden process of interpreting and weighing church doctrine." *Id.* at 451. Indeed, such a process "can play *no* role in any . . . judicial proceedings" because it unconstitutionally "inject[s] the civil courts into substantive ecclesiastical matters." *Id.* at 450-51.

Accordingly, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." *Jones*, 443 U.S. at 602 (citation and quotation marks omitted). Nor can a court base its decision on its own interpretation of a church's religious "practice" or governance. *Id.* The First Amendment precludes courts from engaging in "an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes." *Id.* at 605.

It is important to underscore that the very process by which a civil court would investigate and adjudicate disputed claims about church doctrine and polity is unconstitutional. In *N.L.R.B.*

v. Catholic Bishop of Chicago, 440 U.S. 490 (1979), the National Labor Relations Board sought to apply principles of labor law to Catholic high schools. *Id.* at 491-93. This Court squarely rejected the attempt. Noting that many of the "challenged actions [of the schools] were mandated by their religious creeds" (*id.* at 502), the Court interpreted the National Labor Relations Act narrowly so as to preclude the Board from even inquiring into the internal management of the religious schools. *Id.* at 507. This Court reasoned that "[i]t is not only the conclusions that may be reached by the Board [in adjudicating the claims] which may impinge on rights guaranteed by the Religion Clauses, but also *the very process of inquiry* leading to findings and conclusions." *Id.* at 502 (emphasis added). The identical threat appears in church property disputes, which (as illustrated here) virtually always center around disagreements over religious doctrine and polity.

In sum, this Court's prior decisions have firmly established that the First Amendment forbids civil courts from adjudicating church property disputes by delving into a church's doctrines, polity, practices, or governance. Church property disputes may be resolved by application of the "neutral principles" approach, in which the court "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges," *Jones*, 443 U.S. at 603, with the caveat that "general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." *Md. & Va. Eldership of the Churches of God v. Church of God*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring). Or, courts may employ the "polity" or "deference" approach, *id.* at 368-69, where the reviewing court defers to the highest decision-making body of a hierarchical denomination or, in a congregational denomination, to the local congregation's decisionmaking process. *See Watson*, 80 U.S. (13 Wall.) at 724-27; *see, e.g.*, *Fonken v. Cmty. Church*, 339 N.W.2d 810 (Iowa 1983) (applying polity approach). But regardless of the approach, courts may never engage in an analysis or examination of

ecclesiastical polity, governance, or doctrine in resolving church property disputes. *Jones*, 443 U.S. at 605.

2. Despite this Court's unequivocal pronouncements, the decision below will unavoidably immerse Maryland's civil courts in the examination and interpretation of religious doctrine and ecclesiastical practice. As detailed in the Petition, the court below rejected a straightforward application of the "neutral principles" approach. Under that approach, the court's inquiry would have been limited to ascertaining whether Full Gospel AME Zion Church was in fact a local congregation of AME Zion and whether AME Zion's *Book of Discipline* requires all local congregations to hold church property in trust for the entire AME Zion denomination. *Jones*, 443 U.S. at 606 ("[T]he constitution of the general [hierarchical] church can be made to recite an express trust in favor of the denominational church. . . . And the civil courts will be bound to give effect to the result indicated by the parties. . . ."). Instead, the court mandated a detailed inquiry into the nature and history of the ecclesiastical and pastoral relationship between the denomination and its local congregation to determine whether the congregation had specifically "consented" to the trust provisions of the *Book of Discipline* and whether, in any event, AME Zion had engaged in a course of ecclesiastical conduct that waived its trust rights. Pet. App. 33a-38. Such an invasive investigation is flatly prohibited under this Court's decisions.

Moreover, as this Court recognized long ago, civil courts have no competence to resolve such disputes. *Watson*, 80 U.S. (13 Wall.) at 729. Judges are not – and in their official capacities must not act as – theologians or experts in ecclesiology, and it is dangerous indeed for them to try. In a church property dispute between a denomination and a local congregation, judges have no competence (much less the legal tools) to distinguish between an actual waiver of the denomination's trust rights in local property and, say, Christian patience and long-suffering with a recalcitrant minister and congregation. Is a denomination's toleration of unorthodox practices truly evidence that the local

congregation enjoys a uniquely autonomous position within the polity, with special rights over local church property? What weight does a court give to the decision of denominational leaders to pray for divine intervention and hope that time will bring back a schismatic pastor to a full unity of the faith? Civil courts are institutionally incompetent to answer these and numerous other questions that will inevitably arise under Maryland's totality-of-the-circumstances approach.

3. Worse, Maryland's approach to church property disputes will make the courts a significant force in the development of religious doctrine, polity, and practice. If civil courts are free to construe, for instance, patience and forgiveness as a basis for stripping a denomination of local church property, denominations might feel compelled to alter or compromise key doctrines or practices so as to protect their legal rights. Pressure will mount to make the polity less congregational and more hierarchical, or to centralize property ownership. Strong incentives would be created for a denomination to define standards of ecclesiastical practice and governance with great specificity and to strictly enforce them. Denominations that seek to accommodate diversity with a more flexible doctrinal and ecclesiastical approach might be compelled to enforce greater orthodoxy. As explained, the analysis required by the court below encourages schism and intra-denominational conflict, and (if widely adopted) might well portend the dissolution of some denominations.

* * * * *

The Maryland Court of Appeals has adopted an approach to church property disputes that requires civil courts to enmesh themselves in the interpretation of religious doctrine, polity, and ecclesiastical practice. For over 130 years, this Court's decisions have uniformly rejected such an intrusion into religious affairs as a violation of the separation of church and state. The decision below not only conflicts with those decisions but also sets a dangerous precedent that is sure to promote religious conflict.

III. This Court's Review is Necessary to Resolve the Doctrinal Confusion About the Meaning of "Neutrality" in the Context of Church Property Disputes.

Beyond resolving the conflicts described in the Petition, this Court's review is needed to resolve confusion in the lower courts about the proper meaning of "neutrality" in disputes over church property – a confusion that allowed the court below to adopt a decidedly non-neutral approach under the guise of "neutral principles."

1. Since *Jones* was decided more than 20 years ago, this Court repeatedly has considered principles of neutrality in a variety of First Amendment contexts. *E.g.*, *Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2467 (2002) (neutral funding program); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111-12 (2001) (non-neutral access to school facilities); *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 830-33 (1995) (non-neutral funding program). Yet, in the area of church property disputes, the neutral principles doctrine has gone untouched since 1979.

Although the Court has never fully explicated the meaning of the phrase "neutral principles," this Court's prior decisions suggest that this approach embodies a requirement of evenhanded application of a State's "objective, well-established concepts of trust and property law." *Jones*, 443 U.S. at 603; *see also Md. & Va. Eldership*, 396 U.S. at 368-70 (Brennan, J., concurring). Thus, under that approach, a court should apply to a religious institution the same secular rules that are "developed for use in all property disputes." *Blue Hull*, 393 U.S. at 449; *see Atkins v. Walker*, 200 S.E.2d 641, 650 (N.C. 1973) ("these questions must be resolved on the basis of principles of law equally applicable to the use of properties of an unincorporated athletic or social club").

2. Here, however, the Maryland Court of Appeals seems to have equated "neutral principles" with "secular principles." As a result, it adopted a special rule for churches that, although secular in form, is both different from, and more onerous than, the rule it applies to all other voluntary organizations.

The general rule in Maryland – the *neutral* rule – is that "one who becomes a member of an association is deemed to have known and assented to its bylaws, and cannot be heard to object to the enforcement thereof." 6 Am. Jur. 2d *Ass'ns and Clubs* § 5 (1999); *Donnelly v. Sup. Council, Cath. Benevolent Legion*, 67 A. 276, 278 (Md. 1907).[5] Under this doctrine of consent-by-affiliation, "'the constitution and by-laws of a voluntary association become a part of the contract entered into by a member who joins the association.'" *NAACP v. Golding*, 679 A.2d 554, 560 n.10 (Md. 1996) (citation omitted).[6] Inexplicably, however, the Maryland court declined to apply the doctrine of consent-by-affiliation. Indeed, it failed even to address it, other than to mention that the Church had made this argument. Pet. App. 19a-20a.

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5. This same principle has long been recognized and applied in the context of religious institutions. As noted above, this Court in *Watson* stated that "[a]ll who unite themselves to [a voluntary religious association] do so with an implied consent to [its] government, and are bound to submit to it." 80 U.S. (13 Wall.) at 729. This critical passage, which "has a clear constitutional ring," *Blue Hull*, 393 U.S. at 446, has been repeated throughout this Court's church property decisions. *E.g.*, *Serbian*, 426 U.S. at 711; *Blue Hull*, 393 U.S. at 446; *Kedroff*, 344 U.S. at 114.

6. *Accord Martin v. United Slate, Tile & Composition Roofers*, 77 A.2d 136, 141 (Md. 1950) ("[t]he constitution of an unincorporated association is ¼ a contract between the members"); *Most Worshipful United Grand Lodge v. Lee*, 96 A. 872, 875 (Md. 1916) (a member of an association "has no ground of complaint" when an association enforces its own rules, for the association "is but carrying into effect the agreement he made when he became a member of the association"); *Anacosta Tribe, No. 12 v. Murbach*, 13 Md. 91 (1859). Here, moreover, it is undisputed that Pastor Cherry and the other members of From the Heart actually consented to the Book of Discipline. The ceremony for admitting members to the Church requires the "cheerful[]" acceptance of the Church's rules, Pet. App. 60a (¶ 656), and the ceremony for admission to the pastorate likewise requires the applicant to acknowledge having studied the Church Discipline, and to pledge to preach and maintain it, *id.* at 51a (¶ 213.11-12).

Instead of applying this neutral principle – which would permit the Church, like any other organization, to maintain control over its property simply by inserting an appropriate provision in its constitution, to which members would be deemed to have consented – the court created a unique burden for religious denominations. Henceforth, a denomination can maintain control over church property *only* through one of the following three methods: (1) The denomination may require trust or reverter clauses in the deeds to the property of the local churches. (2) It may include trust or reverter language in its constitution (or some other authoritative source), but for such language to be enforceable: (a) the denomination must also prove that the local church "consented" to the property provisions (by some act other than affiliating with the denomination); and (b) the denomination must rebut any argument that it has somehow waived its rights by "inadequately" enforcing its own rules. (3) It may obtain from the state legislature a special statute imposing a trust in the denomination's favor, or providing for the automatic reverter of local church property to the denomination if the local church withdraws. Pet. App. 16a n.17, 37a-38a.

These options, which amplify the so-called "*Eldership* options" first articulated by the Maryland Court of Appeals in 1968, Pet. App. 16a n.17 (*quoting Maryland & Virginia Eldership of the Church of God v. Church of God*, 241 A.2d 691, 699 (Md. 1968), *vacated and remanded*, 393 U.S. 528 (1969), *reaff'd*, 254 A.2d 162 (Md. 1969), *appeal dismissed*, 396 U.S. 367 (1970)), are decidedly not neutral. The first option denies application of the consent-by-affiliation principle to churches. As a result, religious denominations – whose thousands of congregations have frequently acquired multiple parcels of land over the course of decades, if not centuries – bear the onerous burden of ensuring that each congregation inserts a trust or reverter clause into each property deed. Such a requirement is not a neutral principle

of law, but rather a unique and discriminatory burden on the ability of religious associations to enforce their rules against their own members.

The second option, employed by the court below, is also unconstitutional in application because, as explained above, it is burdened by invasive inquiries into waiver and consent that require the court to interpret religious doctrine, polity, and governance. Moreover, as construed by the court below, this option is decidedly non-neutral because it ignores the consent-by-affiliation principle that protects the institutional integrity of similarly situated secular associations.

Option three is even more problematic. To fall within this option, if a denomination wishes to avoid the heavy burdens of option one, or the invasive and unconstitutional inquiry into consent and waiver required by option two, it must seek a special statute on its behalf from the legislature. And if the denomination wishes to change its policy regarding church property, it must again seek special legislative consideration. This is a unique burden that falls exclusively on religious organizations.

3. Perhaps worse, option three is not even neutral as *among* religions because it favors denominations with political clout while leaving others unprotected. This discrimination is not merely theoretical. To take just one example, as the decision below explained, the Maryland Code specifically protects the United Methodist Church ("UMC"). Md. Code Ann., Corps. & Ass'ns §§ 5-321 to 5-328. In terms virtually identical to the trust clause in AME Zion's *Book of Discipline*, that statute provides that all property held by United Methodist congregations in Maryland is held in trust for the denomination, and that the failure to insert the appropriate trust clause in a property deed does nothing to change this fact. Compare *id.* §§ 5-326, -327 with Pet. App. 54a-55a (¶¶ 494, 495.2). The Maryland Court of Appeals has previously stated that those provisions are adequate to protect the UMC's interest in local church property. *Md. & Va.*

Eldership of the Church of God v. Church of God, 254 A.2d 162, 167 (Md. 1969); 241 A.2d 691, 699 (Md. 1968). Accordingly, if this same dispute had arisen in the United Methodist Church, rather than in the AME Zion Church, the Maryland Code would have been dispositive and the Court of Appeals would simply have affirmed the trial court's decision without the need for the invasive inquiry contemplated by the Court of Appeals.[7]

* * * * *

Based on the experience of these *amici*, the decision below will create tremendous uncertainty and spawn numerous legal disputes over the ownership of religious property, encouraging division within religious denominations. By ignoring the consistent pronouncements of this Court for more than a century, it will also require civil courts to engage in an unconstitutional inquiry into the nuances of church doctrine, polity, and practice. Moreover, the decision below invites state rules and statutes that violate not only the neutrality that should exist between secular and religious institutions, but also the neutrality that the First Amendment mandates among religious denominations.

CONCLUSION

The petition for a writ of certiorari should be granted.

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7. Of course, the failure of Maryland law is not that it appropriately recognizes UMC's property rights but that it fails to recognize the rights of other similarly situated denominations that do not have the benefit of a special statutory enactment. Moreover, this argument does not suggest that states are per se barred from enacting on an ad hoc basis special legislative provisions addressing the property needs of particular churches, so long as such enactments are provided in a nondiscriminatory and substantively fair manner.

Respectfully submitted,

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APPENDIX

APPENDIX — INTEREST OF THE *AMICI CURIAE*

The National Council of the Churches of Christ in the U.S.A. ("NCC") is the principal ecumenical organization in the United States through which 36 Protestant, Orthodox and Anglican member communions (denominations) with a combined membership of more than 50 million Christians in nearly 140,000 congregations nationwide join in a common witness through ministries of faith, justice, education and public witness. The Council has regularly provided leadership in matters of religious liberty and participated as *amicus curiae* in litigation in courts throughout the United States. The NCC supports the freedom of each church to define, for itself, its own style of organization. Petitioner African Methodist Episcopal Zion Church is one of the member communions of the National Council of Churches. Like the African Methodist Episcopal Zion Church, the majority of our member communions are connectional churches that would be severely impacted in their ability to own and control property if the present decision stands.

The African Methodist Episcopal Church ("AME Church") was established in 1787. It has 4,127 individual churches worldwide, with 1.2 million congregants, including 118 individual churches and 71,500 congregants in the state of Maryland. It is a connectional church, and has a provision in its Doctrine and Discipline which requires all of its churches to provide in their deeds that church property is held in trust for the AME Church national denomination. This provision was inserted in 1984. Because of the laws of the states in which is operates, the AME Church feels strongly that connectional churches cannot unilaterally withdraw from their connection with the denomination.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political and religious liberties of American Jews and all Americans. It has taken a special interest in religious liberty issues, and

has insisted in a wide variety of contexts that government should not meddle in the internal affairs of religious institutions. Since the Maryland courts seem to have done just that, it joins this brief.

The Christian Methodist Episcopal Church ("CME Church") was originally a part of the Methodist Episcopal Church in America, forming its own denomination in 1870. Organized by former slaves, the CME Church follows the Methodist tradition, with a hierarchical polity headed by bishops in 10 Episcopal Districts. The CME Church takes pride in the spirit of inclusiveness, general Superintendency of its Episcopacy, its systems of "Conferences," the checks and balances, and the significant role of the laity.

The Community of Christ, formerly known as the Reorganized Church of Jesus Christ of Latter Day Saints (RLDS Church), is an International Christian Religious Society with headquarters in Independence, Missouri and membership in every state and over 40 nations. The mission of the Community of Christ is to proclaim Jesus Christ and promote communities of hope, love, peace and joy. The Community of Christ is committed to the pursuit of peace and justice. The Community of Christ follows doctrines based upon the teachings of Jesus Christ, and its organization follows patterns of the New Testament Church. Its book of Rules and Resolution sets forth the polity and the governing rules or procedures for the Community of Christ. All are approved by the Community of Christ's highest legislative body, the World Conference, consisting of elected delegates from among the membership, which meets in legislative session every two years at the Community of Christ world headquarters building in Independence, Missouri. The Community of Christ has an interest in this case because it raises important questions impacting hierarchical religious institutions and their ownership and control of local congregational premises.

Appendix

The Episcopal Church is a hierarchical or connectional religious denomination. The Church is governed by a General Convention, which is chaired by the Church's Presiding Bishop, the Most Rev. Frank Tracy Griswold, III, who joins in this brief in support of the petition, and by a Constitution and bylaws or "canons." The Church is comprised of some 110 geographical "dioceses," each of which is governed by a Convention, Constitution, and canons of its own. Each diocese is in turn comprised of local worshiping congregations, generally called "parishes" or "missions." Each of the Church's dioceses, parishes, and missions are bound by the actions of the General Convention and by the Church's Constitution and canons. The canons of the Episcopal Church contain a broad array of provisions governing numerous practices and procedures of local congregations, including provisions governing the use and disposition of property. In particular, Canon I.7(4) of the Episcopal Church provides in pertinent part: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. . . ." The Episcopal Church thus has a strong interest in seeking review in this Court of a state court opinion that did not give effect to a similar trust provision in the governing documents of the denomination there involved. The General Convention of the Episcopal Church adopted Canon I.7(4) in 1979, in the wake of this Court's decision in *Jones v. Wolf*, precisely to ensure that the Church's existing, historic trust interest in property held by its constituent parishes and dedicated to the Church's religious purposes would be preserved in states that might now apply "neutral principles" of law to property disputes involving hierarchical churches.

The Ethics and Religious Liberty Commission of the Southern Baptist Convention is the ethics, moral concerns, and religious liberty agency for the Southern Baptist

Convention, the nation's largest non-Catholic denomination, with sixteen million members in over 42,000 autonomous local churches. The Commission is charged with addressing issues of religious liberty both domestically and abroad. The First Amendment implications of this case for the free exercise of religion without government interference raise serious concerns.

The Evangelical Covenant Church is a denomination of evangelical Christian churches with congregations throughout the United States. It has 714 churches in eleven regions with an average attendance of 132,000. It grants clergy credentials to 1877 ministers. It has an interest in a religious denomination's use of its real property in the conduct of its ministry.

The Foundation for the Preservation of the Mahayana Tradition ("FPMT") is an international network of Tibetan Buddhist organizations in the Gelugpa tradition. Led by its Spiritual Director Lama Thubten Zopa Rinpoche, the Foundation for the Preservation of the Mahayana Tradition, Inc. is a central entity that coordinates certain activities of FPMT's many affiliates in the United States and abroad. There are at present approximately 130 centers worldwide affiliated with FPMT, 13 of which are in the United States. These include centers for Buddhist studies, retreat centers, monasteries and nunneries, hospices, elementary schools, and more.

The General Council on Finance and Administration ("GCFA") is the finance and administrative arm of The United Methodist Church. The United Methodist Church is a worldwide religious denomination with approximately 9 million members in the United States; it has approximately 36,000 local churches and 44,000 pastors in the United States. GCFA is charged under United Methodist polity with

protecting the legal interests of the denomination and files this brief in carrying out that responsibility. Only the United Methodist Church's legislative body, the General Conference, has authority to set policy and speak for the entire denomination.

The International Church of the Foursquare Gospel, ("ICFG") a California nonprofit corporation, was established in 1927 to propagate and disseminate the principles embraced in the Foursquare Gospel. The ICFG operates Foursquare Gospel churches in the United States, including the State of Maryland, and around the world. As of the year 2001, there were 1,793 Foursquare churches in the U.S. having 242,616 adherents and over 3 million adherents worldwide attending some 28,000 Foursquare churches. The Bylaws of the ICFG require that title to all real property of Foursquare Churches be vested in the name of ICFG. That is the denomination's means of ensuring that a minister or congregation choosing to disassociate from the Foursquare denomination cannot also take property which has been purchased, often at great sacrifice, by adherents loyal to the Foursquare family. Historically, the present requirement that the ICFG hold title to property has not always been employed. And presently, in response to other concerns, the denomination is again considering other models of holding title to local church properties. The present case, if permitted to stand, injects much uncertainty into these deliberations as to ICFG properties in Maryland. Moreover, because this court is a court of some influence, ICFG is concerned that an unfortunate decision in this matter will confuse and generate controversy in other sister states as well.

Clifton Kirkpatrick, as the Stated Clerk of the Presbyterian Church (U.S.A.), joins this brief on behalf of the General Assembly of the Presbyterian Church (U.S.A.). If courts are not willing to enforce the denomination's ecclesiastical constitutional provisions regarding retention of local church

property, the Presbyterian Church, and other hierarchical churches risk losing to breakaway congregations real and personal property contributed by generations of members to promote the faith and whole church. The General Assembly has long advocated that the civil courts should honor the First Amendment's Establishment Clause, especially when attempting to resolve church property disputes.

Supreme Court, U.S.
FILED
JAN 7 2003
OFFICE OF THE CLERK

No. 02-789

IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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R. Stern et al., *Supreme Court Practice* (8th ed. 2002) 10

REPLY BRIEF

Respondents' brief is striking for what it does not dispute. Respondents do not deny that, aside from the decision below, a conflict exists among State supreme courts over the extent to which the First Amendment precludes judicial inquiry into ecclesiastical relationships. Nor do respondents squarely deny that the highest courts of several States have ruled, contrary to the decision below, that the First Amendment *allows* a court adjudicating a church property dispute to give dispositive effect to a denominational constitution of the sort at issue in *Jones* v. *Wolf*, 443 U.S. 595 (1979). Nor do respondents deny what the *amici* brief of the National Council of Churches et al. confirms; *i.e.*, that the decision below is of immense practical importance to religious denominations, both because of its impact on church property disputes, and because it sanctions intrusive inquiries into sensitive ecclesiastical relationships.

Instead, respondents attempt to escape these critical conclusions—and to establish that this Court lacks jurisdiction—by mischaracterizing AME Zion's petition as a challenge to the presumptive *outcome* of the trial-court proceedings ordered by the decision below, rather than the constitutionality of the *proceedings* themselves. As shown below, that effort, and respondents' various distortions of the decision below, merely underscore the need for this Court's review.

I. THE DECISION BELOW CREATES A CONFLICT ON THE CONSTITUTIONALITY OF RELIANCE ON DENOMINATIONAL TRUST CLAUSES.

As to the first conflict identified in the petition, respondents do not dispute that the court below declined to give dispositive effect to the trust clause in AME Zion's *Book of Discipline* on the theory that such reliance would violate the Establishment Clause. Nor could they, as they urged that very theory below. Reply Br. to Md. Ct. App. at 28. And they do not deny that this objection has been rejected, at least

implicitly, by three other State supreme courts applying the neutral principles approach, and numerous other courts applying the "polity" approach. Pet. 12-15. Instead, respondents mischaracterize AME Zion's argument as based on the differing outcomes of these disputes, and argue that there is no genuine conflict because two (but only two) of the cases on which AME Zion relies have been implicitly overruled. Both contentions are thoroughly incorrect.

1. It is of course true, as respondents suggest, that the neutral principles doctrine gives the States flexibility in resolving church property disputes—subject, of course, to constitutional constraints. The very purpose of the doctrine is to permit the resolution of these disputes within the framework of "objective, well-established concepts of [State] trust and property law." *Jones*, 443 U.S. at 603; Pet. 10. And, because that law varies from State to State, one would expect some differences in the outcomes of these disputes, even on similar facts.

That observation, however, is irrelevant to the first conflict identified in the petition—*i.e.*, whether the First Amendment *precludes* a State court from relying exclusively on a denomination's trust clause in resolving a church property dispute. That is purely a question of federal law. And the fact that the Maryland Court of Appeals has ultimate authority to determine trust and property principles under State law does not mean that its ruling on this important issue of federal constitutional law is unworthy of, or beyond, this Court's review.

Similarly, the fact that other State supreme courts have relied upon State law in deciding to place exclusive reliance on a denominational constitution casts no doubt on the existence of the federal-law conflict shown in the petition. In *Carnes* v. *Smith*, for example, the Georgia Supreme Court relied on State law in resolving a dispute over church property based solely on a trust provision in a denominational constitution. 222 S.E.2d 322, 328 (Ga. 1976); see also *Crumbley* v. *Solomon*, 254 S.E.2d 330, 333 (Ga. 1979) (relying on provision in church discipline); cf. Br. in Opp'n ("BIO") 22. But the

predicate for that ruling—and for this Court's approval of that ruling in *Jones*—was that this approach is *consistent* with the First Amendment. 443 U.S. at 600 & n.2. The conflict on this important issue of federal law could hardly be more stark.

2. Nor can respondents evade this conflict by pointing to subsequent decisions by two of the State supreme courts whose decisions were cited in the petition. BIO 23-24; cf. Pet. 12-13, 14 (discussing *Carnes* and *Zion Hill*). These are just two of the decisions that have explicitly or implicitly rejected the First Amendment analysis in the decision below, and in any event, they remain good law.

First, far from undercutting *Carnes*, the decision of the Georgia Supreme Court in *Coles* v. *Wilburn*, 245 S.E.2d 273 (Ga. 1978) reaffirms precisely those aspects of *Carnes* that are relevant here. In *Coles*, as in *Carnes*, the Georgia Supreme Court resolved a church property dispute by relying on the property rules set forth in a denominational constitution. *Id.* at 274. In fact, the court suggested that if the same provision that existed in *Carnes* were present there—a provision nearly identical to the trust provisions in AME Zion's *Book of Discipline*—it would again have deferred to those provisions, as it did in *Carnes*. *Id.* Most important, nothing in *Coles* suggests that the First Amendment *prevents* a state court from relying exclusively on a denominational constitution.

The same is true of *Haney's Chapel United Methodist Church* v. *United Methodist Church*, 716 So. 2d 1156 (Ala. 1998), which, according to respondents, "rejected" the approach in *Zion's Hill*. BIO 23. To be sure, *Haney's Chapel* was decided differently because that case involved a deed, whereas *Zion Hill* involved only the denominational constitution. 716 So. 2d at 1158. But this hardly constitutes "reject[ion]" of *Zion Hill*. To the contrary, the decision to distinguish *Zion Hill* on its facts signals implicit reaffirmance of the decision. And, once again, *Zion Hill* contrasts sharply with the decision of the Maryland Court of Appeals, for it resolved a church property dispute by relying solely on a

denominational constitution, and believed it could constitutionally do so.

II. THE DECISION BELOW WIDENS A CONFLICT OVER THE EXTENT TO WHICH THE FIRST AMENDMENT PERMITS COURTS TO EXAMINE ECCLESIASTICAL RELATIONSHIPS.

Respondents' arguments likewise fail to undermine the second conflict shown in the petition—*viz.*, the conflict over the extent to which civil courts may delve into ecclesiastical relationships. Respondents do not dispute the importance of this issue—which, again, has been amply confirmed by *amici* religious organizations. Br. of *Amici Curiae* 7-10, 14-15. Instead, respondents attempt to downplay the danger of an unconstitutional inquiry on remand, and to explain away the conflict presented in the petition as based on mere "differences in evidence," BIO 10, 22, or "differences in result," *id.* at 21. Neither argument is persuasive.

1. The conflict described in the petition is plainly based on more than "differences in evidence" or "result." Rather, there exists a fundamental conflict over constitutional limitations on judicial inquiry. As shown in the petition, and as respondents do not even acknowledge, the Connecticut Supreme Court and the North Carolina Court of Appeals, like the court below, have permitted wide-ranging inquiries into ecclesiastical relationships notwithstanding First Amendment objections to those inquiries. Pet. 18-19.

Other courts, however, have taken the opposite approach. In *Parent* v. *Roman Catholic Bishop*, Maine's highest court held that the First Amendment *prohibits* an examination into a bishop's authority. 436 A.2d 888, 890 (Me. 1981); Pet. 17. And, in *Church of God Pentecostal, Inc.* v. *Freewill Pentecostal Church of God, Inc.*, the Mississippi Supreme Court likewise recognized the need to limit judicial inquiry to prevent an unconstitutional examination into ecclesiastical relationships. 716 So. 2d 200, 211 (Miss. 1998); Pet. 18.

Contrary to respondents' argument, the significance of these decisions lies not in the "evidence" they considered, or in their "result," but rather in the fact that those courts—unlike the court below—recognized proper constitutional limits on the evidence that courts may consider in a dispute involving a church. Those decisions thus reflect a view of the constitutional limits on judicial inquiry into ecclesiastical relationships that differs starkly from that of the court below, as well as courts in Connecticut and North Carolina.

2. Respondents are also incorrect in dismissing as "specula[tion]" AME Zion's concerns about the invasive inquiry that the decision below will require on remand. It is hardly speculation to assume that the trial court will follow the directions of the Maryland Court of Appeals. And that court, as amply demonstrated in the Petition, has mandated an invasive inquiry into ecclesiastical relationships in the AME Zion Church by requiring the trial court to conduct a review of "'*all* relevant documents and circumstances,'" including "'the relations between the parties,'" to determine whether (a) respondents consented to the denomination's Discipline and (b) whether the denomination later waived the protections of that document. Pet. 7, 19-20.[1]

Respondents do not dispute that the court below has ordered this broad-ranging inquiry. Instead, they attempt to shift the focus, responding that *one* piece of evidence pertinent to *one* of the two issues that must be decided on remand is a "published admission by AME Zion." BIO 25 (emphasis

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[1] Respondents' invocation of *Maryland & Virginia Eldership* v. *Church of God* is thus irrelevant. BIO 10, 15-17. That decision did not approve or require—as the Maryland Court of Appeals did here—an intrusive inquiry into ecclesiastical relationships, to be carried out though an unconstitutional trial regarding waiver and consent. Moreover, it properly recognized that the First Amendment limits the manner in which courts may resolve church property disputes. 396 U.S. 367, 370 (1970) (Brennan, J. concurring) ("principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues").

omitted). But that document only underscores the constitutional problem, for two reasons.

First, litigation of even the issues raised by that document would plainly violate this Court's teachings about the proper scope of judicial inquiry in a dispute involving a church. That document refers, for example, to a "'misconception[]'" that respondents were engaged, among other things, in "'worship practices not in accordance with [AME Zion's] tradition.'" Pet. App. 19a n.20. As reflected in the decision below, respondents wish to argue that this document shows that they "maintained an unconventional relationship" with AME Zion, and that the Church, by accepting this relationship, waived its rights under the Discipline. *Id.* at 19a.

But the trial court cannot adjudicate that claim without determining such matters as (a) *whether* respondents' "worship practices" did, in fact, deviate from the denomination's "tradition" and (b) if so, *why* AME Zion permitted that deviation. Did it permit it because (as respondents would have it) its bishops had decided to release respondents from their obligations under the Discipline, or because they were attempting to use Christian love (rather than legal muscle) to deal with a wayward but redeemable member of the fold? Such an inquiry, now mandated by the Maryland court, runs headlong into this Court's consistent teaching that civil courts may not examine "religious doctrine and practice," *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), including "questions of church discipline." *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 717 (1976); Pet. 16-17.

Second, that document is only one of many pieces of evidence, including church documents and depositions of church officials that will undoubtedly be the subject of further discovery, which the trial court will need to examine in conducting its required review of "all relevant documents and circumstances." Pet. App. 34a. Indeed, the discovery required by the decision below, and the trial court's subsequent

inquiry, will necessarily encompass the entire history of the "relations" between respondents and the denomination, *id.*, given that the trial court must now determine whether respondents "consented" to the denomination's Discipline in the first place, and then must determine whether, at any point along the way, the denomination somehow "waived" its rights under the Discipline, *id.* at 18a. Moreover, given that the "relations between" AME Zion's bishops and a subordinate minister are fraught with religious significance, and given that any "consent" or "waiver" would itself have been a religious act, these inquiries inevitably will require an unconstitutional evaluation of AME Zion's "religious doctrine and practice." *Blue Hull*, 393 U.S. at 449.[2]

Thus, respondents' arguments merely confirm that the intrusive judicial inquiry ordered by the decision below will exceed the First Amendment limits on such proceedings, as elucidated by this Court, and applied in decisions such as *Parent* and *Church of God*. The refusal of the court below to recognize and respect those limits merits this Court's review.

III. THIS COURT HAS JURISDICTION.

Respondents are likewise incorrect in challenging this Court's jurisdiction. Preliminarily, it is frivolous to suggest that this Court lacks jurisdiction because it has no power to determine Maryland trust law. BIO 14-15. The fact that the Maryland Court of Appeals is the final arbiter of Maryland trust law does not deprive this Court of its long-standing authority to determine whether State courts have interpreted State law in a manner at odds with federal law, or have adopted an interpretation of State law based upon a misper-

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[2] Respondents are also incorrect in asserting that petitioners' challenge to an unconstitutionally intrusive trial amounts to an objection to any trial whatsoever. BIO 12 (contending that AME Zion is asserting "some sort of privilege not to be subject to a trial at all"); *id.* at 25. It is undoubtedly true that church property disputes may go to trial—this is the very premise of *Jones*. But simply because they *may* go to trial hardly means, as respondents would have it, that there are no limits on those proceedings.

ception of federal law.[3] As the petition makes clear, AME Zion seeks review of the Maryland court's various misinterpretations of the First Amendment, not of any pure issues of Maryland trust law. Accordingly, this case falls squarely within this Court's authority to hear cases "where any ... right, privilege, or immunity is ... claimed under the Constitution" of the United States. 28 U.S.C. § 1257(a).

Nor does the procedural posture of this case deprive this Court of jurisdiction. As the petition makes clear, AME Zion is *not* at this point challenging the likely outcome of the trial ordered by the Maryland Court of Appeals. Rather, it is challenging—as it did below—the constitutionality of the particular trial-court inquiry ordered by that court, as well as that court's view that the First Amendment does not allow it to avoid such proceedings simply by relying upon the Discipline's trust provisions. See Pet. (i), 2-3, 6-16, 17-23.

As shown in the petition, and also not disputed by respondents, a claim that the prosecution of a particular legal proceeding would be unconstitutional falls well within the third category of cases discussed in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). Here, if the intrusive and unconstitutional inquiry into ecclesiastical relationships mandated by the Maryland Court of Appeals goes forward, the constitutional injury to AME Zion will already have occurred. As this Court has recognized, in this sensitive area, "[i]t is not only the conclusions that may be reached ... which may impinge on rights guaranteed by the Religion Clauses,

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[3] *See Ake* v. *Okla.*, 470 U.S. 68, 75 (1985) ("when resolution of [a] state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded."); *see also, e.g.*, *Lucas* v. *S.C. Coastal Council*, 505 U.S. 1003, 1014-32 (1992) (analyzing state property law to determine whether it created a taking in violation of the Fifth and Fourteenth Amendments); *Hurley* v. *Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 571-73, 578-79 (1995) (evaluating state public accommodations law to determine whether its application to parade organizers violated the First Amendment).

but also the very process of inquiry leading to findings and conclusions." *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1976). That is precisely what will occur here absent this Court's immediate review. Ecclesiastical confidences will be exposed. Sensitive relationships will be damaged. Religious faith and authority will be undermined. And the public will be treated to the spectacle of a secular court conducting an entangling, inappropriate inquiry into religious matters.

Respondents do not dispute this. Instead, they contend that the third *Cox Broadcasting* category "applies only where the party seeking interlocutory review will be literally prohibited from seeking review in this Court after the state proceedings are finished," and that here, "nothing will prevent [AME Zion] from seeking review in this Court" after trial. BIO 11, 12 n.1. But that misses the point. The critical inquiry is not whether the *case* is subject to later review, but whether "later review of *the federal issue* can[] be had," whatever the ultimate outcome of the case. 420 U.S. at 481 (emphasis added). Here, "the federal issue" presented in the petition—*i.e.*, whether the trial-court *inquiry* mandated by the Maryland Court of Appeals is constitutional—will not be reviewable in this Court after that proceeding occurs, no matter whether petitioners or respondents prevail on remand.[4] Although AME Zion might be able to challenge the outcome of a trial, it will be unable to obtain redress for the injury to its religious mission that will be caused by the proceeding itself. (It cannot, for example, bring a § 1983 suit against the Maryland courts.)

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[4] Accordingly, neither *California* v. *Stewart*, 384 U.S. 436 (1966), nor *North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973), mandates a different result, *see* BIO 11-12. Those were challenges to the ultimate outcome of the proceedings, not to the proceedings themselves. For the same reason, it is irrelevant that this case arises on partial summary judgment. *Id.* at 1, 13. Regardless whether summary judgment was partial or complete, the case must be remanded for further proceedings and, absent review by this Court, those proceedings will entail an unconstitutional investigation into ecclesiastical relationships within AME Zion.

Thus, because AME Zion's First Amendment rights cannot be "effectively vindicated after ... trial," *Mitchell* v. *Forsyth*, 472 U.S. 511, 525 (1985), this case falls squarely within the third *Cox Broadcasting* category. Pet. 21-22.[5]

To be sure, some of the cases reviewed under that category involved constitutional immunities against any suit at all, as opposed to a constitutional bar against judicial inquiry into a particular subject matter (here, ecclesiastical relationships). Compare Pet. 22 n.5, with BIO 12 n.1. But that is not a requirement of *Cox*, see 420 U.S. at 481, and even those cases reflect the general principle that interlocutory decisions are "final" for purposes of this Court's review "where the subsequent state proceedings would themselves deny the federal right for the vindication of which review is sought in the Supreme Court," R. Stern et al., *Supreme Court Practice* 154 (8th ed. 2002). That is equally true here, where the intrusive trial-court examination ordered by the decision below would itself violate AME Zion's First Amendment rights.

In short, this petition is AME Zion's only opportunity to challenge the constitutionality of the trial-court proceedings ordered by the Maryland Court of Appeals, as opposed to the outcome of those proceedings. The fact that the decision below contemplates further proceedings therefore does not, as respondents contend, deprive this Court of jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[5] This case also falls within the fourth *Cox Broadcasting* category. As in *Mercantile National Bank* v. *Langdeau*, 371 U.S. 555 (1963), the First Amendment issue here is "'anterior to the merits'" of the plaintiff's cause of action, *Cox Broad.*, 420 U.S. at 484 (quoting 371 U.S. at 558)—*viz.*, the ownership under Maryland law of the disputed property (virtually all of which is real, rather than personal, property, *cf.* BIO 2, 20). Moreover, permitting the trial mandated by the Maryland court to go forward will "seriously erode federal policy," 420 U.S. at 483, by permitting an invasive and entangling inquiry into ecclesiastical relationships and disciplinary practices within the AME Zion Church. *See* Pet. 16-17.

Respectfully submitted,

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January 7, 2003

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